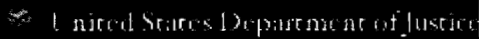


EXHIBIT 1



THE UNITED STATES ATTORNEY'S OFFICE
WESTERN DISTRICT *of* WASHINGTON

[U.S. Attorneys](#) » [Western District of Washington](#) » [News](#)

Department of Justice

U.S. Attorney's Office

Western District of Washington

FOR IMMEDIATE RELEASE

Monday, July 7, 2014

**Russian Hacker Arrested for Computer Hacking Scheme
that Victimized Thousands of Credit Card Customers**

**Seattle Area Businesses Had Their Point Of Sale Computers Hacked,
Information Stolen**

A Russian man, indicted in the Western District of Washington for hacking into point of sale systems at retailers throughout the United States was arrested this weekend and transported to Guam for an initial appearance, announced U.S. Attorney Jenny A. Durkan. ROMAN VALEREVICH SELEZNEV, 30, of Vladivostok, also known as "Track2" in the criminal carding underground, was indicted in March 2011, for operating several carding forums that engaged in the distribution of stolen credit card information. At his first appearance in Guam today, SELEZNEV was ordered detained pending a further hearing scheduled for July 22, 2014.

"Cyber crooks should take heed: you cannot hide behind distant keyboards. We will bring you to face justice," said U.S. Attorney Jenny A. Durkan, who leads the Justice Department's Cybercrime and Intellectual Property Enforcement Subcommittee of the Attorney General's Advisory Committee. "I want to thank the U.S. Secret Service for their work in investigating this case and in apprehending the defendant. I also want to give credit to the work of the Electronic Crimes Task Force, and Seattle Police Department in particular, and our partners in the United States Attorney's Office in Guam, the Department of Justice's Office of International Affairs, and the Computer Crime and Intellectual Property section of the Department of Justice's Criminal Division."

The indictment, unsealed today following his arrest on July 5, 2014, details a bank fraud scheme in which SELEZNEV is charged with hacking into retail point of sale systems and installing malicious software on the systems to steal credit card numbers. The illegal hacking outlined in the indictment occurred between October 2009, and February 2011. The indictment alleges that SELEZNEV created and operated infrastructure to facilitate the theft and sales of credit card data and used servers located all over the world to facilitate the operation. This infrastructure included

servers that hosted carding forum websites where cybercriminals gathered to sell stolen credit card numbers. The charges in the indictment include five counts of bank fraud, eight counts of intentionally causing damage to a protected computer, eight counts of obtaining information from a protected computer, one count of possession of fifteen or more unauthorized access devices (stolen credit card numbers), two counts of trafficking in unauthorized access devices and five counts of aggravated identity theft.

"The arrest of Roman Seleznev is yet another example of how the Secret Service continues to successfully combat data theft and financial crimes," said Robert Kierstead, Special Agent in Charge of the U.S. Secret Service Seattle Field Office. "The Secret Service utilized state-of-the-art investigative techniques to dismantle this criminal network. Our success in this case and other similar investigations is a result of the extraordinary work of our investigators and our close work with our network of law enforcement partners."

Bank Fraud is punishable by up to thirty years in prison and a \$2 million fine. Intentionally causing damage to a protected computer resulting with a loss of more than \$5,000 is punishable by up to ten years in prison and a \$250,000 fine. Obtaining information from a protected computer is punishable by up to five years in prison and a \$250,000 fine. Possession of more than 15 unauthorized access devices is punishable by up to ten years in prison and a \$250,000 fine. Trafficking in unauthorized access devices is punishable by up to 10 years in prison and a \$250,000 fine. Aggravated identity theft is punishable by an additional two years in prison on top of any sentence for the underlying crimes. In determining the actual sentence, the Court will consider the United States Sentencing Guidelines, which are not binding but provide appropriate sentencing ranges for most offenders.

SELEZNEV is also charged in a separate indictment in the District of Nevada with participating in a racketeer influenced corrupt organization (RICO) and conspiracy to engage in a racketeer influenced corrupt organization as well as two counts of possession of fifteen or more counterfeit and unauthorized access devices. Those charges carry maximum penalties of up to 20 years in prison for RICO and RICO conspiracy and up to 10 years in prison for possession of fifteen or more counterfeit and unauthorized access devices.

Credit card fraud costs financial institutions \$40 billion annually. In the Western District of Washington more than 180,000 stolen credit card numbers have been identified in recent cyber cases.

The charges contained in the indictment are only allegations. A person is presumed innocent unless and until he or she is proven guilty beyond a reasonable doubt in a court of law.

The case is being investigated by the U.S. Secret Service Electronic Crimes Task Force which includes detectives from the Seattle Police Department. The Office of International Affairs, the Computer Crime and Intellectual Property Section of the Department of Justice's Criminal Division and the U.S. Attorney's Office for the District of Guam provided substantial assistance. Assistant United States Attorney Norman M. Barbosa is prosecuting the case in the Western District of Washington.

For additional information please contact Todd Greenberg, Assistant United States Attorney for the United States Attorney's Office, at (206) 553-7970.

USAO - Washington, Western District

Updated March 20, 2015

EXHIBIT 2



*U.S. Department of
Homeland Security*

**United States
Secret Service**

PRESS RELEASE

July 7, 2014
Contact: (202) 406-5708
GPA 06-14

U.S. SECRET SERVICE ARRESTS ONE OF THE WORLD'S MOST PROLIFIC TRAFFICKERS OF STOLEN FINANCIAL INFORMATION

(Washington, D.C.) On July 5, 2014 the U.S. Secret Service arrested Roman Valerevich Seleznev. A Russian national, Seleznev was indicted in the Western District of Washington in March 2011 for hacking into point of sale systems at retailers throughout the United States between October 2009 and February 2011.

"This important arrest sends a clear message: despite the increasingly borderless nature of transitional organized crime, the long arm of justice – and this Department – will continue to disrupt and dismantle sophisticated criminal organizations," said Secretary of Homeland Security Jeh Johnson. "This arrest reflects the hard work by the U.S. Secret Service and our interagency and international partners, and we must continue close collaboration with the law enforcement community to counter this ever evolving threat."

According to the indictment, Seleznev hacked into point of sale systems throughout the United States and operated servers and international carding forum websites to facilitate the theft and sale of stolen credit card data. Seleznev, known as "Track2" in the criminal carding underground, remains in custody pending trial.

"Secret Service agents utilize state-of-the-art investigative techniques to identify and pursue cyber criminals around the world. This scheme involved multiple network intrusions and data thefts for illicit financial gain. The adverse impact this individual and other transnational organized criminal groups have on our nation's financial infrastructure is significant and should not be underestimated," said Julia Pierson, Director of the U.S. Secret Service.

The charges in the indictment include five counts of bank fraud, eight counts of intentionally causing damage to a protected computer, eight counts of obtaining information from a protected computer, one count of possession of 15 or more unauthorized access devices, two counts of

trafficking unauthorized access devices, and five counts of aggravated identity theft. The case remains under investigation by the U.S. Secret Service Electronic Crimes Task Force in Seattle and is being prosecuted by the U.S. Attorney's Office for the Western District of Washington.

"Cyber crooks should take heed: you cannot hide behind distant keyboards. We will bring you to face justice," said U.S. Attorney Jenny A. Durkan. "I want to thank the U.S. Secret Service for their work investigating this case and apprehending the defendant. I want to also acknowledge the work of the Seattle Electronic Crimes Task Force, the Seattle Police Department, the Department of Justice Office of International Affairs, and the U.S. Attorney in Guam."

Seleznev is also charged in a separate indictment in the District of Nevada with participating in a racketeer influenced corrupt organization (RICO) and conspiracy to engage in a racketeer influenced corrupt organization as well as two counts of possession of 15 or more counterfeit and unauthorized access devices. Those charges carry maximum penalties of up to 20 years in prison for RICO and RICO conspiracy and up to 10 years in prison for possession of 15 or more counterfeit and unauthorized access devices.

The U.S. Secret Service has taken a lead role in mitigating the threat of financial crimes since the agency's inception in 1865. As technology has evolved, the scope of the U.S. Secret Service's mission has expanded from its original counterfeit currency investigations to also include emerging financial, electronic and cyber-crimes. As a component agency within the U.S. Department of Homeland Security, the U.S. Secret Service has established successful partnerships in both the law enforcement and business communities – across the country and around the world – in order to effectively combat financial crimes.

###

EDITOR'S NOTE: For questions concerning this release, please contact the U.S. Secret Service Office of Government and Public Affairs at 202-406-5708.

EXHIBIT 3



RUSSIAN NEWS AGENCY

Foreign Ministry outraged by Russian citizen's detention by US secret service in Maldives

World July 08, 13:17 UTC+3

July 5, Russian citizen Roman Seleznyov was detained in the airport of Male, Maldives, forced by agents of American secret service into a private jet and brought to Guam Island



Russian Foreign Ministry building in Moscow

Russian Foreign Ministry building in Moscow

© ITAR-TASS/Gennady Khamelyanin

MOSCOW, July 8. /ITAR-TASS/. Russia considers the detention of the Russian citizen Roman Seleznyov by US secret services as Washington's unfriendly step, the Russian Foreign Ministry said on Tuesday.

"As it became known, July 5, Russian citizen Roman Seleznyov was detained in the international airport of the city of Male, the capital of Maldives," the ministry recalled. "On the same day, he was forced by agents of American secret service into a private jet and delivered to Guam Island. This fact has been already confirmed by the US Department of Homeland Security."

"We consider the incident as another Washington's unfriendly step," the Russian Ministry of Foreign Affairs stressed.

"It is not the first time that the US kidnaps a Russian citizen ignoring the 1999 mutual legal assistance agreement," the ministry said. "In particular, the same occurred with Viktor Bout and Konstantin Yaroshenko, who were brought by force in the USA from third countries and convicted on questionable charges." "Noteworthy that we are not informed about the claims lodged against our compatriots, furthermore, as in Seleznyov's case, they don't even inform Russia's diplomatic agencies about their detention," the ministry emphasized.

About the stance of Maldives' authorities

"The stance of Maldives' authorities cannot be but outraging, since despite the existing international legislation norms they allowed another country's special service to kidnap a Russian citizen and take him out of the country," the diplomatic service stressed. "We demand that the Maldives' government provides necessary explanations."

"Russian diplomats are making every possible effort to find out the circumstances of Roman Seleznyov's detention and to provide his soonest return to homeland," the Foreign Ministry said. "We are insisting on intelligible explanations of the incident from US authorities, strict compliance with the rights of the Russian citizen and provision of consular access to him."

"In view of the aforementioned situation, we once more strongly recommend our compatriots to give serious consideration to Russian Foreign Ministry's warning published on the ministry's website regarding the risks linked with trips abroad when there are concerns that American law enforcement agencies might lodge any claims against them," the statement says.

Detained Russian turns out to be son of lawmaker

State Duma member representing the Liberal Democratic Party (LDPR) Valery Seleznyov has confirmed his son Roman had been detained by US secret service in the Maldives.

"I am now in negotiations with the Russian Foreign Ministry. Kidnapping is a crime," he told ITAR-TASS on Tuesday. "The country must protect its citizens, and Roman should go back to Russia."

Earlier on Tuesday, Valery Seleznyov dubbed a provocation media reports saying that his son Roman was allegedly arrested in the USA on suspicion of a cyber attack, data theft and computer-related fraud.

"This is some monstrous lie and provocation," the lawmaker told ITAR-TASS.

"The case in hand is that in media reports, there are many evidential inaccuracies: my son was not on the territory of the USA and he was not born in Moscow," Seleznyov specified.

In addition, he said that his son Roman had nothing to do with computer technologies. Furthermore, Seleznyov recalled that in 2011, his son became victim to a terrorist attack in Morocco. "It's painful to me as a father to speak about it, but consequences of this tragedy are seen until today, Roman is going through a medicated rehabilitation course, and I cannot image how he could be involved in any cyber attacks amid the issues he has," the MP said.

He added, however, that he couldn't get in touch with his son yet.

The lawmaker doesn't exclude that "a terrible coincidence occurred, and the detained young man is just a namesake of Roman". "In any case, I wish him success, since we all know what American justice actually is," the lawmaker concluded.



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Beta-version. Some publications may contain information not suitable for users under 16 years of age.

THE MINISTRY OF FOREIGN AFFAIRS OF THE RUSSIAN FEDERATION

official [site](#)

Comment by the Information and Press Department of the Russian Ministry of Foreign Affairs regarding the situation involving the kidnapping of the Russian national Roman Seleznyov by the US intelligence agencies

1681-11-07-2014

We continue to ask Washington to immediately free Roman Seleznyov, who was forcibly removed from the Maldives to Guam, a US island, on the 5 July. From the phone conversation of the Russian national, who is now in one of Guam's prisons, with representatives of the Russian General Consulate in San Francisco, we have learnt new shocking details of this story.

It turns out that when Roman Seleznyov passed through airport control before his flight, in the airport of the Maldives capital, from where he wanted to fly to Moscow, he was asked to visit a room for an extra check. Then three employees of the US intelligence agencies broke in, roughly announced that he was being detained, put him in handcuffs and immediately took him on board a private plane, which immediately started to move onto the take-off strip. No more than 20 minutes passed from the detention of our compatriot to take-off.

No legal procedures with the participation of local authorities, which are necessary when extraditing, were held. The detention itself was committed by the US agents, who were acting in the Maldives territory in a blitz style disregarding any legal formalities. Thus, the Russian national was actually kidnapped, which is a gross violation of the laws of any civilised state and international law.

It is outrageous that the US prison refuses to provide necessary medication to Roman Seleznyov, who was severely injured in a terrorist attack in 2011 and constantly needs his medication. As a result of this his health and even his life are under threat. Another way of applying pressure on the Russian seemingly is the cold in his single cell, where he is being kept. The purpose of such methods seemingly is to break the will of our compatriot, because the accusations raised against him are seriously doubtful.

For our part, in our contacts with the US authorities, we insist that they stop torturing the Russian national and strictly observe his rights, including the provision of adequate medical aid to him. It is expected that Russian diplomats will visit Roman Seleznyov on the 14 July within the framework of a consular visit.

11 July 2014

[Register](#)[Sign in](#)

Russia Demands United States Releases Accused Hacker Roman Seleznev Immediately

BY REUTERS 7/15/14 AT 6:15 AM

MOSCOW (Reuters) - The Russian Foreign Ministry said on Tuesday it had issued an official protest to the United States demanding immediate release of a Russian citizen detained last week on hacking charges.

Moscow accused Washington of kidnapping Roman Seleznev who was detained at an airport in the Maldives and accused of hacking into U.S. retailers' computer systems to steal credit card data.

The arrest of the 30-year-old son of a deputy in Russia's lower house of parliament has increased tensions between the two countries, already at their worst since the end of the Cold War over the Ukraine crisis.

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"From our side, we stressed the unacceptability of such actions which are a flagrant violation of the legitimate rights and interests of the Russian citizen, who was in fact kidnapped from the territory of a third country," the Foreign Ministry said in a statement.

It issued a demarche - a formal diplomatic statement of concern - to a representative of the U.S. embassy.

"We again demanded the immediate release of Roman Seleznev, providing him with adequate medical care and in general respecting his legal rights and interests," the ministry said.

The U.S. State Department has dismissed Moscow's accusations of kidnapping, saying Seleznev was indicted in the state of Washington in March 2011 on charges including bank fraud, causing damage to a protected computer, obtaining information from a protected computer and aggravated identity theft.

JOIN THE DISCUSSION

Add a comment...

Comment

Facebook social plugin

EXHIBIT 4

CIVILLE & TANG, PLLC
SUITE 200, 330 HERNAN CORTEZ AVENUE
HAGATNA, GUAM 96910
TELEPHONE: (671)472-8868
FACSIMILE: (671) 477-2511

*Attorneys for the Person Being Detained As
Defendant Roman Seleznev*

**IN THE UNITED STATES DISTRICT COURT
FOR THE TERRITORY OF GUAM**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROMAN SELEZNEV,
aka TRACK2,
aka ROMAN IVANOV,
aka RUBEN SAMVELICH,
aka nCuX,
aka Bulba,
aka bandysli64,
aka smaus,
aka Zagreb,
aka shmak,

Defendant.

MAGISTRATE CASE NO. 14-00056

**DECLARATION OF
ROMAN SELEZNEV**

1. My name is Roman Seleznev, and I am being detained as and accused of being the Defendant named Roman Seleznev in the indictment in Case No. CR11-070RAJ from the United States District Court of the Western District of Washington.
2. I am over the age of 21, and competent to make this declaration.
3. I am a citizen and a resident of the Russian Federation.
4. On or about July 5, 2014, I was in the Republic of the Maldives on the last day of a family vacation.
5. I was traveling with my family consisting of my girlfriend Anna Otisko, and her four year old daughter.

ORIGINAL

6. On the morning of July 5, 2014, I proceeded with my family to the Male International airport for our 11:55 a.m. scheduled flight back to the Russian Federation.

7. When I arrived at the airport, I was directed to a side inspection area with my family. We were led into a small room, and I was separated from Anna and the child who were directed into an adjacent room with a partial glass door.

8. As soon as I was separated from my family, three Americans I had not seen before rushed in behind me and I was thrown by the Americans to the couch that was in the small room.

9. One of the three Americans screamed loudly that he was with the United States Secret Service and that I was under arrest. When I asked why I was under arrest, a paper was aggressively dangled in front of my face. None of these three individuals was a Maldives law enforcement agent as far as I could determine.

10. I demanded that I be allowed to contact legal counsel, and asked those arresting me to contact my Embassy and representatives from the Russian Federation.

11. I was eventually allowed to review the document that had been thrust in my face. The document appeared to be an American court document describing certain crimes. As I was reviewing the paper, the paper was taken away and I noticed that the American agents were searching my family's luggage.

12. I was ordered to empty my pockets and my belongings were seized from me by the American agents. One of the American agents ordered me to give him my hands. I was told that I had no choice in the matter, and I was then handcuffed.

13. As I was being handcuffed, I again asked for legal counsel and consular assistance, but none was provided.

14. My family could witness my arrest through the partial glass door, but the American agents would not allow me to communicate with them. At one point, the door to the room in which I was being held was opened and I informed my family that they were keeping me here. The American agents immediately began to yell and told me that I was not allowed to talk to anyone and then immediately closed the door.

15. While the American agents were searching our luggage they told me to go over and unlock it. I walked over and from a distance looked at the luggage and told them it was unlocked. I then sat down without touching the luggage. The agents never asked for permission to search our luggage and neither my girlfriend nor I gave them permission to search our luggage.

16. The American agents then led me on through the Male International airport. It was clear to me that the arresting agents were trying to disguise my arrest from others in the airport by forcing me to have a t-shirt draped over the handcuffs.

17. The American agents also took the laptop from our baggage, and a mobile phone. I was never shown a warrant or any other similar document allowing such a seizure.

18. We made a stop in another small room as we took our route through the airport, and then I was led by the American agents to an unmarked jet and forced to board it. I again asked about legal counsel and contacting my country, and was not allowed to do so.

19. I only have a limited grasp of English. About three hours into the flight the American agents for the first time showed me Miranda warnings that were written in Russian and English.

20. Although I asked where I was being taken to, I was provided with no answer. After a long flight, we eventually landed in Guam and I was immediately placed in jail.

21. I have worked with a Russian language translator in preparing this declaration.

I declare under penalty of perjury that the foregoing is true and correct and that I execute this Declaration in Hagåtña, Guam this 20th day of July, 2014.



ROMAN SELEZNEV

CERTIFIED TRANSLATION

I do hereby declare under penalty of perjury that I am fluent in the Russian and English languages and that I met with Roman Seleznev at the Department of Corrections, Mangilao, Guam and translated to him, to the best of my ability, the attached document entitled "*Declaration of Roman Seleznev*" from English to Russian.

Dated: July 20, 2014

Paulina P. Collins

PAULINA COLLINS

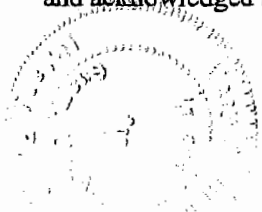
Translator

GUAM, U.S.A.)

) ss:

CITY OF HAGATNA)

On this ^{20th} day of July, 2014, before me, the undersigned notary, personally appeared PAULINA COLLINS, the person whose name is signed on the preceding or attached document, and acknowledged to me that She signed it voluntarily for its stated purpose.



Mary A. Cruz

Notary Public

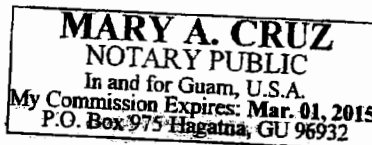


EXHIBIT 5

CT 771.110 (409-771-23434-S) Broadway Grill - Request for IOD (Continued)

cc: macDougall

SEA

Sent: Wednesday, March 13, 2013 1:15 PM

To: CID; cis; PAR

Cc: SEA; ISD; PHX; ATL; MIA

U. S. SECRET SERVICE INVESTIGATIVE REPORT

FROM: SEATTLE FIELD OFFICE FILE: 409-771-23434-S
TO : CRIMINAL INVESTIGATIVE DIVISION X-REF: 178-771-43719-S
CYBER INTELLIGENCE SECTION 410-775-09446-S
PARIS FIELD OFFICE 417-769-08288-S
INFO: PHOENIX FIELD OFFICE 202-768-22869-S
ATLANTA FIELD OFFICE 203-771-42801-S
MIAMI FIELD OFFICE 404-771-20456-S
SEIZURE #: N/A

SUBJECT: REPORT OF CONTINUING INVESTIGATION / REQUEST FOR INVESTIGATION OTHER DISTRICT

ACTUAL LOSS: \$6,300,000 POTENTIAL LOSS: \$100,000,000

CASE TITLE : BROADWAY GRILL
CASE TYPE : 771.110 - FRAUDULENT USE OF ACCOUNT NUMBERS - BANK CARDS
SECONDARY TYPES : 775.610, 774.060, 775.120, 775.220, 775.230,
775.520, 725.110, 767.100, 767.120,
768.100, 769.110, 848.290, 848.920
848.930, 848.940, 848.950, 848.191
CONTROLLING OFFICE: SEATTLE FIELD OFFICE
REPORT MADE BY : SA Kirk Arthur, (206)553-1922
DATE CASE OPENED : 11/01/10
PREVIOUS REPORT : REQUEST FOR IOD / REPORT OF CONTINUING INVESTIGATION DATED 11/19/12
REPORTING PERIOD : 11/20/12 - 03/10/13
STATUS : CONTINUED

SYNOPSIS:

The Seattle ECTF is investigating a case involving over four-hundred (400) individual network intrusions linked to Roman V. Seleznev, two-hundred and fifty-three (253) of which involved the theft of financial information. Seleznev has stolen financial information from at least eight (8) businesses located in the Western District of Washington. Seleznev has been indicted by the United States Grand Jury, Western District of Washington, for numerous violations stemming from this investigation.

Efforts are currently underway to locate and apprehend Seleznev should he travel to a country in which there exists a Mutual Legal Assistance Treaty (MLAT) with the United States of America.

The Paris Field Office is requested to continue working with Ukrainian law enforcement regarding the www.bulba.cc server.

On 2/14/13, this case was reassigned to SA Kirk Arthur.

Case continued.

DETAILS OF INVESTIGATION:

Reference is made to all previous reports for this investigation, the most recent being the Report of Continuing Investigation/Report of Investigation Other District, dated 11/19/12 by TFO David Dunn, SEA/ECTF.

Reference is made to the Investigative Report from SA Joey Ward, Atlanta Field Office, dated 01/28/13, closing SEA's IOD request.

Reference is made to the Investigative Report from SA Daniel MacDougal, Phoenix Field Office, dated 01/28/13, regarding SEA's IOD request.

Reference is made to the Investigative Reports from SA Jerry Heyn, Paris Field Office, regarding the status of SEA's IOD request, the most recent dated 02/15/13.

TFO David Dunn is no longer assigned as the case agent for this investigation. On 2/14/13, this case was reassigned to SA Arthur.

Efforts continue to locate Roman Seleznev and apprehend him should he travel to a country in which there exists a Mutual Legal Assistance Treaty (MLAT) with the United States of America.

No other investigation occurred during this time period.

JUDICIAL ACTION:

No judicial action occurred during this reporting period.

SUSPECTS/DEFENDANTS:

Seleznev, Roman - Suspect
1599 : Yes
1599A: No

Unknown Subject - Suspect
1599 : Yes
1599A: No

EXAMS CONDUCTED:

ESCAP: N/A
Polygraph: N/A
FSD: N/A

DATABASE SEARCHES:

MCI / CI: 01/25/11
NCIC/NLETS: N/A
ISD SEARCHES: N/A

EVIDENCE/CONTRABAND/PERSONAL PROPERTY:

All evidence remains as previously reported.

DISPOSITION:

The Paris Field Office is requested to continue working with Ukranian law enforcement regarding the www.bulba.cc server.

Case continued pending further investigation and judicial action.

USSS/SEATTLE

ARTHUR/PAGE/HELMINSKI

EXHIBIT 6

IN THE DISTRICT COURT OF GUAM
TERRITORY OF GUAM

UNITED STATES OF AMERICA,)	Magistrate Case No. 14-00056
)	
Plaintiff,)	
)	
vs.)	
)	
ROMAN SELEZNEV,)	
aka TRACK2,)	
aka ROMAN IVANOV,)	
aka RUBEN SAMVELICH,)	
aka nCuX,)	
aka Bulba,)	
aka bandysli64,)	
aka smaus,)	
aka Zagreb,)	
aka shmak,)	
)	
Defendant.)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE FRANCES TYDINGCO-GATEWOOD
CHIEF JUDGE
8:53 A.M.; JULY 31, 2014
HAGATNA, GUAM

**Motion to Discharge and Release Defendant Pursuant to
FRCP12(b) (3) (A); if Motion Denied, Rule 5 Hearing**

Proceedings recorded by *mechanical stenography*, transcript
produced by computer.

Veronica F. Reilly, CSR No. 2004
Federal Official Court Reporter
520 W. Soledad Avenue
Hagatna, Guam 96910

APPEARANCES

Appearing on behalf of plaintiff:

OFFICE OF THE UNITED STATES ATTORNEY
BY: MARIVIC DAVID, AUSA,
ANDREW FREEDMAN, AUSA (via telephone)
MICHAEL MORGAN, AUSA (via telephone)
Suite 500, Sirena Plaza
108 Hernan Cortez Avenue
Hagatna, Guam

Appearing on behalf of defendant:

LAW OFFICES OF CIVILLE & TANG
BY: PATRICK CIVILLE, ESQ.,
JOSHUA WALSH, ESQ.
330 Hernan Cortez Avenue
Suite 200
Hagatna, Guam

LAW OFFICES OF FOX ROTHSCHILD
BY: ROBERT RAY, ESQ.,
ELY GOLDIN, ESQ.
10 Sentry Parkway
Suite 200
Blue Bell, PA

ALSO PRESENT:

David Iacovetti, Secret Service

Polina Collins, Russian interpreter

Veronica F. Reilly, CSR No. 2004
Federal Official Court Reporter
520 W. Soledad Avenue
Hagatna, Guam 96910

I N D E X

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The Court finds that it does have personal jurisdiction over defendant	68
The Court denies request to continue the identify hearing	73
Court finds that the government have met its burden of proof regarding whether or not there's probable cause to believe that the person arrested is the person named in the charging instrument	197
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The Court also will issue a decision on the personal jurisdiction matter	201

EXAMINATION

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
<u>GOVERNMENT WITNESSES:</u>				
Dan Schwandner	83	108 (C)	133 (D) 136 (F)	134 (C) 138 (C)
Michael Fischlin	140	164 (G)	180 (D)	184 (G) 188 (C)

EXHIBITS

<u>GOVERNMENT EXHIBITS:</u>		
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Veronica F. Reilly, CSR No. 2004
Federal Official Court Reporter
520 W. Soledad Avenue
Hagatna, Guam 96910

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1 **July 31, 2014; at 8:53 a.m.; Hagatna, Guam**

2 * * *

3 THE COURT: Please be seated. We'll call the
4 case.

5 THE CLERK: Criminal Case Number -- Magistrate
6 Case Number 14-00056, *United States of America v. Roman*
7 *Seleznev*; hearing on motion to continue hearing on
8 Mr. Seleznev's motion to discharge and release, hearing on
9 motion to discharge and release defendant pursuant to FRCP
10 12(b) (3) (A); and if motion is denied, Rule 5 hearing.

11 Counsel, please state your appearances.

12 MS. DAVID: Good morning, Your Honor. Marivic
13 David for the United States, with Resident Agent in Charge
14 David Iacovetti from Secret Service. And I believe government
15 counsel from Seattle, Washington, is -- are also on the
16 telephone.

17 THE COURT: Okay. Let me just see. This is
18 David -- how do you say your last name, sir?

19 AGENT: Iacovetti, ma'am.

20 THE COURT: Iacovetti?

21 AGENT: Yes, ma'am.

22 THE COURT: Okay. David Iacovetti.

23 All right. And on line is Assistant U.S.
24 Attorney. Is that -- you want to go ahead and identify
25 yourself for the record.

1 MR. MORGAN: Yes. Good morning, Your Honor.
2 United States Attorney Michael Morgan for the United States.

3 MR. FREEDMAN: And also Assistant United States
4 Attorney Andrew Freedman, both in Seattle.

5 THE COURT: Okay. Mr. Morgan and Mr. Freedman,
6 thank you. And I understand there was a little delay based on
7 some technical difficulties arising from coordinating with
8 Washington, D.C., and so forth. Is that right? On the VTC?

9 MR. MORGAN: There was certainly a technical
10 problem, so, yes. I apologize, Your Honor.

11 THE COURT: That's fine. That's fine. We can
12 proceed with you telephonically.

13 Yes, Mr. Civile.

14 MR. CIVILLE: Buenas and hafa adai, Your Honor.
15 Patrick Civile, Joshua Walsh.

16 THE COURT: Okay. Good morning.

17 MR. CIVILLE: And we are here for the person
18 charged as being the defendant, Roman Seleznev. This -- that
19 person is sitting in court. He apologizes for his attire,
20 Your Honor. The -- apparently the marshals office has taken
21 it upon itself to decide when a person -- in detention can
22 dress appropriately to come into court, but that's another
23 matter we can raise.

24 With Mr. Seleznev is our translator, Polina
25 Collins. Also on the line are our -- my co-counsel, Robert

1 Ray and Ely Goldin.

2 THE COURT: Okay. Mr. Goldin and Mr. Ray, are
3 you there?

4 MR. RAY: Yes.

5 MR. GOLDIN: We are.

6 THE COURT: Okay. Very well.

7 MR. GOLDIN: Yes, Your Honor.

8 THE COURT: All right. Good evening, I guess, or
9 good morning here.

10 And I just want to reconfirm that the
11 interpreter -- Russian interpreter, Ms. Polina Collins, you
12 have already been sworn in previously? She has not? I
13 thought she said she had.

14 Okay. Why don't you please rise and be sworn in,
15 Ms. Polina Collins.

16 THE CLERK: Ma'am, please raise your right hand.

17 (Interpreter Polina Collins, sworn.)

18 THE CLERK: Ma'am, please speak into the mic.

19 INTERPRETER: I do.

20 THE CLERK: And for the record, again, please
21 state your name and spell your last name.

22 INTERPRETER: Polina Collins, C-O-L-L-I-N-S.

23 THE CLERK: Thank you.

24 THE COURT: Thank you.

25 All right. Okay. The -- okay, let me just go

1 ahead and begin before I hear from you, Mr. Civile. The
2 Court is in receipt of the motion to continue hearing, which I
3 received -- let's see. Today is Thursday, so I received it
4 late Tuesday afternoon, as did the U.S. Attorneys' Office.
5 And then the United States submitted an opposition this
6 morning, I believe, at 7:30 a.m. Is that correct, Ms. David?

7 MS. DAVID: That is correct, Your Honor.

8 THE COURT: Which the Court was reading this
9 morning. And then the defense then filed a supplemental
10 memorandum, which the Court has also read before. I was just
11 trying to get all this reading done this morning. I just want
12 to ensure that -- first of all, have you had an opportunity to
13 review the opposition filed by Mr. Civile, Ms. David?

14 MS. DAVID: Um, just very quickly, Your Honor,
15 given the time allotted until the Court called us in session.

16 THE COURT: Okay. All right. Well --

17 MR. CIVILLE: Your Honor, I've -- when I came in,
18 I had a chance to -- to the courtroom, I had a chance to read
19 over the government's documents.

20 THE COURT: Okay. Can you bring the mic a little
21 closer, up a little higher, Mr. Civile?

22 MR. CIVILLE: Yes, Your Honor.

23 THE COURT: All right. Let me just -- before we
24 begin, let me just say, the Court has read your motion and the
25 exhibits filed, and it appears to me that the discovery

1 request is tailored in such a way that you're trying to prove
2 that there was a -- that -- whether or not there was an
3 agreement between the Republic of Maldives and the United
4 States. And this is also supported by your last-minute filing
5 this morning, ECF37. Is this an accurate assessment of what
6 you're trying to accomplish with your discovery request?

7 MR. CIVILLE: Your Honor, I think that's too
8 narrow a reading of what we're trying to accomplish. What we
9 are trying to establish, and what we believe we have a right
10 to establish and a right to develop evidence on at this stage
11 of the proceedings, is that Mr. Seleznev was forcibly rendered
12 to the United States by conduct of -- by outrageous conduct of
13 the United States, and that under the outa- -- we have
14 several theories on why this Court does not have jurisdiction
15 over Mr. Seleznev, but the discovery in -- is in particular
16 focused on the shocking and outrageous behavioral allegation
17 that we are making.

18 Part of that is -- is directed, as you can see
19 from the papers we've submitted, to the representations that
20 United States agents made to Maldivian authorities, whether
21 those were accurate representations, truthful representations,
22 whether the Maldivian -- whether U.S. agents actively
23 participated and circumvent[sic] a ruling of the Maldivian
24 court. And I think that those are -- those are issues that
25 are fairly raised.

1 I would note that the Ninth Circuit most recent
2 pronouncement on this is in *U.S. v. Struckman* --

3 THE COURT: Okay.

4 MR. CIVILLE: -- a 2010 decision.

5 THE COURT: Mm-hmm.

6 MR. CIVILLE: In part there at page 574 of -- 611
7 F.3d 574, the Court noted, "In *Anderson*, we decline to" --
8 which is another Ninth Circuit decision which supports
9 generally our right to pursue this line of inquiry. But in
10 *Struckman*, decided four years after *Anderson*, the Court
11 said -- let me put it on the screen here.

12 THE COURT: Mm-hmm.

13 MR. CIVILLE: "In *Anderson*, we declined to apply
14 the *Ker/Frisbie* shocking and outrageous conduct exception
15 because Costa Rica's decision to expedite the defendant was
16 not dependant on representations made by United States
17 government agents to Costa Rican authorities that may have
18 misled Costa Rica."

19 Here, similarly, *Struckman* has not demonstrated
20 prejudice from O'Brien's misstatement. But what's important,
21 Your Honor, is that the Court recognize that misstatements or
22 misrepresentations by the United States could form a basis for
23 -- potentially form a basis for an outrageous conduct claim.
24 And you can see that in the paragraph above where the --
25 that's under -- that's highlighted here: "The lies told by

1 O'Brien to Panamanian officials" -- and this is in the
2 *Struckman* case -- "are considerably more troubling than other
3 aspects of U.S. governmental involvement in Panama. We are
4 not prepared to say that blatant lies to a foreign government
5 that induce the foreign government to transfer a defendant to
6 the United States when it otherwise would not could never
7 amount to conduct so shocking and outrageous as it violate due
8 process and require dismissal of pending criminal proceedings
9 in the United States."

10 Okay. So the Ninth Circuit has -- has clearly
11 announced that this -- that we are well beyond the -- the
12 notion that only torture is the way for a person in
13 Mr. Seleznev's shoes to challenge the jurisdiction of the
14 Court at this stage.

15 THE COURT: And you're not claiming that there
16 was any torture of any kind by any agents?

17 MR. CIVILLE: No, we're not, Your Honor.

18 THE COURT: I mean, this particular -- I mean,
19 even assuming everything Mr. Seleznev has said in his
20 declaration is true, obviously that does not amount to the
21 level of shocking and outrageous conduct found in the Second
22 Circuit case of *Toscanino*.

23 MR. CIVILLE: *Toscanino* was -- no, that --
24 *Toscanino* was -- frankly, Your Honor, that was low-hanging
25 fruit. Despite the fact that the Department of Justice argued

1 that -- you may recall, I mean, the facts in that case were so
2 shocking. It involved kidnapping, torture over a period of
3 days, starvation, injecting fluids into the anal cavity,
4 injecting fluids by -- forcibly by mouth, beatings. It was
5 such -- such a -- I mean, that's at one end of the spectrum
6 where if you don't find that's outrageous conduct, well, I
7 mean, there -- you know, call Satan and tell him when the day
8 of judgment comes, you're coming to live with him because
9 you've lost your conscience. That is so far at one end of the
10 spectrum.

11 What's important, though, Your Honor, is that --
12 and the Ninth Circuit is very clear on this, that you don't
13 have to be all the way out at the far end of that spectrum for
14 there to be a finding of outrageous governmental misconduct.
15 And what *Struckman* stands for, Your Honor, is that even
16 misrepresentations by the United States to induce -- to
17 falsely -- or to trick a foreign country into releasing
18 somebody can amount to outrageous conduct, conduct that shocks
19 the conscience. And that's really the key phrase, does it
20 shock the conscience. And I don't -- I don't think we have to
21 have that discussion this morning --

22 THE COURT: Right.

23 MR. CIVILLE: -- I'm hoping. What we're asking
24 for, what we've suggested, Your Honor, and what we've
25 presented the Court with is evidence that we're not whistling

1 in the dark here. We have what we think is solid -- or we're
2 developing solid evidence that there were misrepresentations.
3 We think certainly we've raised a serious enough question that
4 the government should be required to respond to our discovery
5 request so that we can know fully what were the circumstances
6 under which Mr. Seleznev was forcibly rendered to the United
7 States.

8 THE COURT: But what you cite in *Struckman* -- I'm
9 looking at the particular highlighted portion above -- above
10 the highlighted portion, when you talk about the lies. In
11 that particular paragraph, wasn't it a situation where the
12 misstatements caused the local government to expel the
13 defendant?

14 MR. CIVILLE: And the -- it appears that way.
15 Yes, Your Honor. And here -- yes. Now, here, the government
16 -- the United States is on -- at least in its press release,
17 claims that the Maldives expelled Mr. Seleznev. We don't
18 believe that's true, and that's one of the things we want to
19 explore. What we think is -- actually, we think this is even
20 more serious than *Struckman*, is that -- that the United States
21 ignored Maldivian judicial process.

22 We have reliable information, and we think that
23 this -- and we're look -- and -- well, let me tell what you
24 the reliable information is and I'll tell you what -- how I
25 think this relates to this -- the discovery request. We have

1 reliable information that at the United States' request,
2 perhaps it was -- and we don't know. We're not sure if the
3 United States directly made this or the Maldivian police made
4 this request to the Maldivian court for an order of -- calling
5 for Mr. Seleznev's arrest and removal. We understand that
6 that was denied and that the United States, instead of -- and
7 we want to know the circumstances of that, whether it was
8 denied subject to Mr. Seleznev being brought before a
9 Maldivian court and allowed -- and being given notice of the
10 charges against him and being given counselor access before
11 being removed.

12 THE COURT: But even if -- let's assume the Court
13 accepts your representation in your favor, the worst-case
14 scenario where there was no agreement, they alledgedly
15 violated Maldives law. Is there any case law -- any case law
16 that requires this Court or, actually, any federal Court --
17 but let's just focus on my Court right now -- that requires a
18 mandatory divestment of personal jurisdiction because the
19 government's conduct violated Maldives law or customary
20 international law? Is there anything that requires that?

21 MR. CIVILLE: Well, Your Honor, I do -- yes.
22 Well, I guess I'm troubled by the Court's use of the word
23 "required." I always hate to tell a judge you have to do --

24 THE COURT: Okay.

25 MR. CIVILLE: Okay. But I think that when we

1 read the development -- this is a dynamic area of the law.
2 There aren't that many cases, but it is a dynamic area. We've
3 -- we've gone -- we've seen a real progression of judicial
4 thought since *Ker* and *Frisbie*, which is in 1952 -- *Frisbie* in
5 1952. We've even seen a progression of thought in the past
6 ten years.

7 Certainly in this circuit, Your Honor, which is,
8 I think, a particular concern for this Court, we've seen a
9 real development of thought in this area. And what that is,
10 is that development is showing that, yes, we're going have --
11 we're going to allow defendants to bring before the Court, and
12 in the form of an evidentiary hearing, their claim that their
13 forcible rendition to the United States was the result of some
14 sort of outrageous government conduct that shocks the
15 conscience. And we submit that if we can establish that, that
16 this -- that Your Honor -- that the remedy that Your Honor is
17 -- and, once again, I hate to always say -- tell the judge you
18 have to, but I think the appropriate remedy is dismissal or to
19 return Mr. Seleznev outside the United States.

20 So in specific answer, Your Honor, I think the
21 *Anderson* and *Struckman* in particular, read together, and also,
22 oddly, an old case out of the Southern District of New York,
23 *United States v. Malik*, is another -- stands for -- *Malik* is
24 important, Your Honor, and instructive because it stands for
25 the well-established principle that in removal proceedings,

1 the issue of jurisdiction should be addressed -- if raised by
2 the defendant, must be addressed at that point.

3 And I don't know if the Court has any -- is
4 thinking about that or that's an issue for you, but we think
5 that the case law is very clear that we -- that -- the
6 criminal proceedings that have certainly been initiated. Even
7 -- this is the second time in my career I've cited to Justice
8 Thomas. Even Justice Thomas, who normally would rely with the
9 government on these things, very forcefully and clearly has
10 said that once the indictment -- certainly by the time the
11 indictment is handed down, criminal proceeding has been
12 initiated. Under Rule 16, we think criminal proceedings have
13 been initiated.

14 So we are appropriately raising at the first
15 possible instance, which is what you need to do, which any --
16 any lawyer worth their salt would do, is raise at the first
17 possible instance the issue of Court's jurisdiction over the
18 person of the defendant. And we have to do that. That's a
19 waivable issue. So you have -- you have -- certainly have the
20 authority to decide this issue of jurisdiction over
21 Mr. Seleznev. And we think, yes, you are required, that this
22 isn't something, you know, take this cup from my lips, you can
23 pass it off to the Western District in Washington. This is --
24 for better or worse, has landed on your lap, and I think it
25 needs to be decided here.

1 THE COURT: Well, but focus -- let's just focus
2 on the discovery aspect, though. And so you're saying the
3 Court is just taking a narrow view of your request made in the
4 letter submitted by Mr. Walsh on July 9th and then 20 days
5 later, July 29th, and then now at this motion for continuance.
6 It seems to me that it -- that all of the request -- the
7 requested discovery specifically is dealing with the arrest of
8 -- I mean the circumstances of his arrest, his rendition,
9 whether or not there was an agreement, even if -- you know,
10 whether or not there was an agreement with the Maldives
11 government, how did the -- how did the Secret Service get over
12 there and assert its jurisdiction over the defendant. I mean,
13 that's what you're saying.

14 MR. CIVILLE: Yes, Your Honor. That's
15 specifically -- our discovery at this point is -- you're --
16 you've -- that's spot on, is narrowly focused to those two
17 issues.

18 The only thing I thought was a little confining
19 in your previous question is, we're not sure what that
20 discovery -- I mean, we have some good ideas of what that
21 discovery is going to show, but we don't -- it may show some
22 things we're not fully expecting. So I don't want to limit --
23 when we come back and say, okay, Your Honor, here's what we
24 think is the outrageous conduct, I don't want to limit myself
25 today to saying it's just one thing if the discovery is --

1 proves that it's really more extensive than even we know at
2 this point or believe at this point.

3 THE COURT: All right. So let me hear from the
4 U.S. Attorneys' Office, then, on the particular request for
5 discovery.

6 MS. DAVID: Your Honor, my colleagues from
7 Seattle who are on the phone can address that particular
8 issue.

9 THE COURT: Okay. Who is going to be speaking,
10 then? Will it be Mr. Morgan or Mr. Freedman?

11 MR. MORGAN: It's gonna be Mr. Morgan, Your
12 Honor. Thank you.

13 With respect to the discovery request, there is
14 simply no authority for the notion that Rule 16 provides any
15 discovery in the context of a Rule 5 proceeding. The
16 government's Rule 16 obligations aren't gonna be triggered
17 when and until Mr. Seleznev is removed to the Western District
18 of Washington. So the short answer is that the defense has no
19 right to discovery at this stage of the proceeding.

20 That point aside, I think the Court hit it right
21 on the head when it described the nature of the defense's
22 motion, which is the motion to divest itself of jurisdiction.
23 Well, of course you can't divest yourself of jurisdiction
24 unless you have jurisdiction, and the Court plainly has
25 personal jurisdiction over Mr. Seleznev. The proper forum for

1 a motion to dismiss in the context that defense is raising it
2 is a motion to dismiss the indictment, and that is a motion
3 that is properly addressed in the Western District of
4 Washington.

5 So the defense is certainly entitled to explore
6 these issues; they're just doing it in the wrong forum.

7 THE COURT: Anything else? Anything else,
8 Mr. Morgan?

9 MR. MORGAN: With respect to the discovery --

10 THE COURT: Right.

11 MR. MORGAN: -- no. I mean, I suppose counsel
12 has -- his argument has sort of morphed over into the merits
13 of their motion, and I guess the short answer to that is that
14 the allegations they've made, even accepting them as true, as
15 a matter of law will not support their motion. The *Struckman*
16 case they cite, as the Court rightly pointed out, involved a
17 case in which the government affirmatively misrepresented
18 facts to the Panamanian government to secure the defendant's
19 expulsion from the country and rendition to the United States.

20 That is, in essence, what they're alleging here.
21 And I would want to point out, it's purely allegation. None
22 of the attachments, none of the exhibits I've seen present any
23 concrete proof of any of their allegations. They may have
24 suspicions, and I don't know what those suspicions are based
25 on, but it's certainly not in anything in the record before

1 this Court.

2 And I think it's quite clear that when the Court
3 asked is there any case law that supports this, there's not a
4 single reported decision where a Court has ever divested
5 itself of jurisdiction on the basis of an outrageous
6 government misconduct claim. And with respect to claims far
7 more severe than Mr. Seleznev has alleged -- and I would just
8 point the Court to the *Matta-Ballesteros* case from the Ninth
9 Circuit, which is a pretty severe case. So that's the case
10 where the defendant was literally kidnapped, hooded, bound, in
11 a military raid from his home. I mean, if that's not in
12 violation of the law of Honduras, I would be surprised. And
13 the Ninth Circuit was quite clear that that's not enough to
14 divest this Court of jurisdiction.

15 So I guess as far as discovery and a continuance,
16 it's pointless because they're trying to litigate something
17 that is -- their allegations at present will not succeed.

18 THE COURT: Okay. Yes, finally, Mr. Civile.

19 MR. CIVILLE: Thank you, Your Honor.

20 THE COURT: Before I make my ruling on the motion
21 for continuance.

22 MR. CIVILLE: Your Honor, I always love to get a
23 chance to use Paul Newman's line in -- what's that movie where
24 he was, I don't know, a washed up lawyer and then he makes the
25 big comeback? Okay. Well, in that case, the judge kept

1 interrupting his examination and asking the witness very --
2 questions that were just prejudicial to Newman's case. And
3 when I heard the -- the gentleman from DOJ just argue that,
4 eh, Judge, don't worry, you don't need -- you don't not[sic]
5 need this discovery or Seleznev doesn't need this discovery
6 because it doesn't make any difference. I remember this line.
7 Paul Newman in that case looked at the judge and said -- the
8 prosecutor, and said, "If you're gonna try my case for me,
9 would you try not to lose it."

10 And that's -- of course the government is gonna
11 say it doesn't worry. Interestingly, they don't say they
12 don't have discovery that's responsive, they don't have
13 information that's responsive to our request. They're not
14 saying that. And I think it's very -- and we have raised, I
15 think, issues, Your Honor, that fairly -- that show once again
16 that this is not a fishing trip. We have good reason to
17 pursue this line of inquiry.

18 The Court in -- I think it was *Struckman*, Your
19 Honor -- and this is one of those things that I always think
20 trial courts may find helpful, just trying to guess what you
21 might find helpful, Your Honor. There, the judge allowed an
22 evidentiary hearing, and he ended up issuing in that -- and I
23 don't think you'll need to do that here, but he issued an
24 83-page opinion. And the Ninth Circuit in, I think, at least
25 three instances very positively alluded to the record that the

1 trial court had allowed to be developed, said, well, the judge
2 did this, the judge did that. And they were very impressed by
3 that.

4 And I think that is what we are looking for the
5 opportunity to do, is to develop the record and to present the
6 record fully so that -- so that Your Honor can make a ruling.
7 And, Your Honor, we think that what we're asking the Court to
8 do at the end of the day -- we believe we will be asking the
9 Court to make a decision that is well within the parameters
10 that -- of the Ninth Circuit case law in *Anderson* and
11 *Struckman*.

12 When the -- one other thing I wanted to point
13 out, and the government raised this in the -- in their
14 opposition, is that they said, well, we're not entitled to
15 discovery. Well, under Rule 16(a)(E)(i), it very clearly says
16 that we are entitled -- and this is -- if you're in the
17 purple. Oh, I'm in the wrong book, Your Honor. I'm in the
18 blue book. Anyway, it's --

19 THE COURT: Okay, it's purple. But go ahead.

20 MR. CIVILLE: I have the blue one.

21 THE COURT: Well, hopefully it hasn't changed.

22 MR. CIVILLE: The panel will get me my fresh
23 copy.

24 THE COURT: Okay.

25 MR. CIVILLE: It's one of the benefits.

1 Your Honor, the --

2 THE COURT: Rule 16.

3 MR. CIVILLE: -- 16(a)(E) -- okay. "Upon
4 defendant's request, the government must permit inspection."
5 Small i: "The item is material to preparing the defense."
6 And that's what this is, Your Honor. This is material -- at
7 this stage of proceeding, the defense is -- that -- it's a
8 jurisdictional defense. And we are -- and I believe we are
9 entitled to those documents.

10 THE COURT: Don't you think the Court can make a
11 decision by accepting your factual allegations as true, all
12 the allegations that you have submitted, even the allegations
13 that you believe you're going to receive in terms of discovery
14 in the future regarding the arrest and the expulsion of
15 Mr. Seleznev -- and so if I accept it as true for purposes of
16 this motion -- motion of discharge and release and make a
17 ruling and -- still allowing you to preserve -- allowing your
18 client to preserve his right to bring up the motion again
19 before the indicting Court after full discovery, then he will
20 have not lost his right to proceed forward.

21 MR. CIVILLE: Your Honor, I don't -- I think that
22 would -- no, I don't think that would be appropriate or the
23 better -- I don't think that would be the correct course of
24 conduct for a couple -- one, is to force us to rely simply on
25 the record we have now without the benefit of the

1 specifically-tailored discovery that we've requested as to
2 these issues, is going to result in an incomplete record. And
3 the prejudice to Mr. Seleznev is that it also means that we
4 may be overlooking issues or we may not be fully articulating
5 issues that we have because we haven't seen evidence that's in
6 the government's possession that's relevant to this issue.

7 THE COURT: What you're saying is, though,
8 relevant to the facts of shocking and outrageous conduct.
9 That's what you're saying. That's what --

10 MR. CIVILLE: Yes, relevant to our challenge to
11 jurisdiction over --

12 THE COURT: Right. And the two challenges -- I
13 mean, the two exceptions would be, number one, either the
14 violation of an extradition treaty, which there are none, and
15 the second one would be this -- a shocking and outrageous
16 governmental conduct.

17 MR. CIVILLE: Yes.

18 THE COURT: That's what you're focusing in on?

19 MR. CIVILLE: Yes, Your Honor.

20 And -- and we think that at -- and I think the
21 cases that we've cited and -- stand for the proposition that
22 we should have the opportunity to develop the record at this
23 stage, that we're entitled to at least the limited discovery
24 we've requested at this stage, not -- and that it's
25 prejudicial to Mr. Seleznev to have to go to Washington and --

1 I mean, he's here -- by our position, he was forcibly rendered
2 here. He should not be here.

3 The rule of law kicks in right here. I mean,
4 that's where it starts, the rule of law. And he's entitled to
5 -- at this -- and the *Melekh* case fully supports this idea
6 that you have the authority and the power and, with all
7 respect, the duty to decide this threshold jurisdictional
8 issue.

9 So I think it's really important that we be
10 allowed to have the limited discovery that we've requested,
11 and then we can present that to you. We would like to call
12 the witnesses. We -- certainly the Secret Service agent who
13 is here, we would probably want to call him to the stand. And
14 there -- depend -- and there may be other witnesses that we
15 want to call that we -- that will be disclosed in the
16 discovery, to address this jurisdictional issue. And I think
17 that has to happen here and now, Your Honor. Or not today,
18 but that has to happen here in this Court, and that's -- the
19 case law, I think, supports that. The rule, Rule 5, supports
20 that. And the Supreme Court pronouncements that we refer to
21 in our papers about when a criminal proceeding starts -- and
22 it has started. There's no doubt about it. The proceedings
23 have started. Mean that this is the place where you should
24 raise them.

25 THE COURT: Okay. All right.

1 MR. CIVILLE: Thank you, Your Honor.

2 THE COURT: Thank you.

3 I will allow the U.S. Attorneys to go ahead and
4 speak on this issue because it's an important issue for them
5 as well. Mr. Morgan?

6 MR. MORGAN: Yes, Your Honor. I -- truthfully, I
7 have little to add to what I had said previously. We don't
8 dispute that at some juncture the defense is perfectly
9 entitled to raise a challenge to the circumstances of
10 Mr. Seleznev's apprehension in the context of a motion to
11 dismiss the indictment. That is, in every single case that
12 the defense has cited, the vehicle by which that motion was
13 brought before the Court. That's the proper vehicle, and the
14 forum for that is in the district of indictment. Rule 5 is
15 quite clear that in a removal proceeding like this, the
16 Court's inquiry is very circumscribed. Once you've been
17 presented with an indictment, the issue before the Court is
18 identity. Any other issue that's a defense -- and the defense
19 has raised that. They're calling it a jurisdictional defense,
20 but it's nevertheless the defense for the indictment. Those
21 issues are properly addressed in the district of indictment.

22 So the defense will -- the defense will be
23 entitled to discovery once they're in the District of
24 Washington, and then they can pursue the issue there. They
25 lose -- they don't lose anything, frankly, except they would

1 like to litigate this issue now. And with respect, this is
2 simply the wrong forum.

3 MR. CIVILLE: Your Honor?

4 THE COURT: Okay. Yes?

5 (Pause.)

6 MR. CIVILLE: Your Honor, the Mikla [sic]
7 decision is -- *Melekh* decision is also, I think, a good source
8 of guidance on this for -- standing for the proposition that
9 if the Court doesn't -- if the -- and what I think the
10 government is missing -- okay. This is a jurisdictional
11 question, jurisdiction over the person of this man sitting
12 here. What *Melekh* said is that if you don't -- if the Court
13 doesn't have jurisdiction, which is what you're saying here,
14 then it doesn't have the power to remove. Your power to
15 remove is based on your jurisdiction over this person, but if
16 you don't have that jurisdiction, then you don't have the
17 power to remove.

18 The Supreme Court -- or the Guam Supreme Court --
19 and these are civil contexts in light of the recent DFS Lotte,
20 criticized the trial court for making comments -- after
21 finding that it did not have jurisdiction, it made some
22 comments on the record. And the Court said, no, once you --
23 once the Court doesn't have jurisdiction, you can't make it --
24 you can't continue to do things in the case. And I think
25 that's -- if Your Honor doesn't have jurisdiction, if we get

1 our discovery and we show you that -- that we don't have --
2 that Your Honor, for whatever reason, doesn't have
3 jurisdiction -- I shouldn't say -- if we establish our
4 argument that the Court does not have jurisdiction over the
5 person of Mr. -- of Mr. Seleznev, then I think the only
6 appropriate remedy is -- has to be in this Court.

7 And we're not talking about the indictment. The
8 indictment may be -- we're not arguing about whether the
9 indictment was proper. This is --

10 THE COURT: Although you did ask in the initial
11 motion to discharge the case. I mean, basically, a dismissal
12 of the case.

13 MR. CIVILLE: Well, it would be a dismissal at
14 least as to this person, as to him. Now, I don't -- frankly,
15 I don't know that that requires then a dismissal of the
16 indictment. I don't want to commit myself on that. Your
17 Honor, if I can just -- just so you'll know, some of the major
18 issues that we want -- that we believe the discovery will
19 raise: Did the U.S. know that the Maldives had denied -- the
20 judge in the Maldives denied an arrest warrant; did the U.S.
21 agents there do anything to circumvent the lawful process by
22 arranging for his extraterritorial arrest; did the U.S.A. use
23 the idea of the Red Notice, the INTERPOL Red Notice, as a
24 pretext to cover up what actually happened.

25 And the INTERPOL Red Notice is interesting, Your

1 Honor, because it's dated July 5th, the same day that he was
2 -- that Seleznev was taken -- was arrested in the Maldives by
3 the U.S. agent. And that needs to be explored because -- just
4 on the time difference alone. The Maldives -- first of all,
5 that would have been still July 4th in the Western District of
6 Washington. So -- and where this issue -- where was this
7 issue from, when was it issued? It seems there's something
8 amiss about just the fact that Seleznev's arrested in the
9 early -- mid-morning on July 5th, and the U.S. apparently used
10 a INTERPOL Red Notice dated July 5th, so we want to inquire
11 into that.

12 THE COURT: But, again, even if the United States
13 did do that -- I mean, you've seen the case law about forceful
14 abductions allowed or sanctioned. And even if there was some
15 discrepancy with regard to the INTERPOL Red Notice and you
16 were to try to find this in the discovery, and if you were to
17 discover that the United States Secret Service or other --
18 and/or other law enforcement agents disregarded a Maldives
19 judge's order -- even if you were to assume all that, all to
20 the benefit of your client --

21 MR. CIVILLE: Okay.

22 THE COURT: -- then the Court can -- the Court
23 can accept those factual allegations as true and move on to
24 the issue of whether or not that's shocking and outrageous.
25 We can go ahead and proceed forward.

1 MR. CIVILLE: Well, except you won't have the
2 record. And I think -- and, certainly, it's prejudicial
3 farther down the road because we don't have -- then if
4 somebody is looking at this, they say, well, you know, the
5 judge just accepted all of these unsupported allegations. If
6 you're going to -- even if the Court were inclined to do it as
7 -- to -- let's say, worst-case scenario, that you're inclined
8 to rule against us on the merits of our jurisdictional
9 argument. I think that, in fairness, we should be allowed to
10 develop the record so that it's not -- it's not just the
11 suppositions by the defendant that, okay, we'll accept these
12 wild, fanciful notions by Mr. Seleznev, even accepting those
13 as true. That's -- that's a completely different flavor than
14 if we have testimony and we have documents and we say, "Judge,
15 look, here it is. Here is the arrest warrant, here is the
16 internal memo from DO- -- from the Secret Service saying, 'The
17 Maldives judge turned us down. They want to have Seleznev
18 brought before him before we can take him out of the country.
19 What are we gonna do? Hey, I got an idea.'"

20 That kind of evidence is far more -- I mean, it's
21 important, and fair play demands that if that evidence is out
22 there, we be given an opportunity to bring it before you.
23 Even if you think you -- it may not make a difference to you,
24 we have a right to develop that record. That's what I'm
25 suggesting. And we think that there is evidence -- I mean, we

1 think that there's something there that -- that we're -- I
2 keep saying this. We're not on a fishing expedition. There's
3 enough discrepancies that we think that -- in the information
4 that the government's provided and in the information that
5 we've developed and the research we've been able to do,
6 investigation we've been able to do, to suggest that we're not
7 getting -- that Your Honor is not getting the full story.

8 And so if Your Honor is going to -- even if Your
9 Honor were to say at the end of the day, "I don't think this
10 is outrageous. This conduct by the government doesn't shock
11 my conscience," we very much want the opportunity to allow you
12 to make that decision on a full record, or certainly a much
13 more developed record than just what will certainly be
14 characterized as defendant's speculation.

15 THE COURT: All right. All right.

16 MR. CIVILLE: Thank you.

17 THE COURT: Okay. Let me -- okay. Mr. Morgan,
18 I'm gonna take about a five-minute -- let me take a ten-minute
19 recess and I'll come back and make my ruling on the motion for
20 continuance. Ten minutes, Counsels.

21 MR. CIVILLE: Thank you.

22 THE CLERK: All rise. The Court's in recess.

23 (Recess taken at 9:36 a.m.)

24 (Back on the record at 10:43 a.m.)

25 THE COURT: We're back on the record. This is

1 USA v. Roman Seleznev and this is Criminal Case No. 14-56.

2 All counsels are present. Defendant is present. Interpreter
3 is present. Agent's present.

4 All right. The Court -- thank you for your patience,
5 Counsels. Of course this is an important position for the
6 defense. And the Court believes, though, based on all of the
7 filings before the Court, the Court will accept all the fact
8 -- factual allegations in defendant's favor as true, including
9 the allegations made today for the purposes of the hearing --
10 of hearing Mr. Seleznev's motion to discharge and release
11 defendant pursuant to Federal Rule Criminal Procedure
12 12(b)(3)(A). Accordingly, the Court hereby denies the motion
13 to the -- continue, and this Court will move forward with the
14 hearing.

15 The Court, as stated -- notes that it does have the
16 motion to discharge and release the defendant pursuant to this
17 motion -- to Federal Rule Criminal Procedure 12(b)(3)(A),
18 alleging a defect and instituting the prosecution. Mr.
19 Seleznev moves the Court to:

20 Number 1, decline jurisdiction and terminate the
21 prosecution; 2, discharge the case; 3, release him; and 4,
22 issue such orders and further relief as may be appropriate.

23 Mr. Seleznev makes the following legal arguments:

24 Number 1, the Court lacks jurisdiction because
25 the manner in which he was arrested constitutes shocking and

1 outrageous government conduct amounting to a due process
2 violation, such that this Court has divested a personal
3 jurisdiction over him; 2, the arrest violates customary
4 international law and should shock the conscience of this
5 Court and cause it to divest itself of jurisdiction; and 3,
6 the arrest violates jus cogens norms of international law, and
7 thus the Court should exercise its supervisory power and
8 dismiss the case.

9 The Court will first address Mr. Seleznev's argument
10 that the arrest violates jus cogens norms of international
11 law, and thus the Court should exercise its supervisory power
12 and dismiss the case. A Court may dismiss an indictment under
13 its inherent supervisory authority if it finds that the
14 government's conduct violated the jus cogens norms of national
15 law, citing to *U.S. v Struckman*, Ninth Circuit case, 2010.
16 However, the Court finds this to be a matter of substance that
17 must be addressed by the transferee Court or the indicting
18 Court and not by the removal Court, given that the indictment
19 is pending in the Western District of Washington.

20 The Court's subject matter jurisdiction is limited by
21 Federal Rule Criminal Procedure 5(c)(3)(D), which provides
22 that this Court must transfer the defendant to the district
23 where the offense was allegedly committed if the government
24 produces a warrant, a certified copy of the warrant, or a
25 reliable electronic form of either and the judge finds that

1 the defendant is the same person named in the indictment,
2 information or warrant.

3 In this case, the United States, I believe, will
4 be producing a copy of an arrest warrant for an individual
5 named Roman Seleznev. And if it does that and the Court finds
6 that it's proper, then the only remaining issue is whether the
7 arrestee is the same person named in the superseding
8 indictment. Any other matter must be addressed by the
9 district where the offense was alledgedly committed. And that
10 -- the Court cites to *U.S. v Green*, 499 F.2d 538, 541 (DC Cir.
11 1974). The clear mandate of former Rule 40 sharply limits the
12 function and authority of the magistrate and, by the same
13 token, the jurisdiction of the district court for the transfer
14 or district.

15 Where the terms of the removal are met in a
16 proceeding for removal in furtherance of a prosecution by
17 indictment, that Court lacks power to dismiss either the
18 proceeding or the prosecution. However, because Mr. Seleznev
19 is challenging this Court's personal jurisdiction over him,
20 the Court believes it must address this before it can proceed
21 with the Rule 5 hearing.

22 The Ninth Circuit has noted that the starting
23 point in a personal jurisdictional challenge is, quote, "The
24 venerable principle that the manner by which a defendant is
25 brought to trial does not affect the government's ability to

1 try him," end quote; citing *Struckman* -- which case -- that
2 case cites to *U.S. v Matta-Ballesteros*. And this is known --
3 and the *Matta-Ballesteros* case is 71 F.3d 754, 762 (9th Cir.
4 1995). This is known as the *Ker-Frisbie* doctrine. Recognized
5 exceptions to the *Ker-Frisbie* doctrine are if either, one, the
6 transfer of the defendant violated the applicable extradition
7 treaty; or two, the United States government engaged in
8 misconduct of the most shocking and outrageous kind to obtain
9 its presence. And the Court cites to *U.S. v Anderson*, Ninth
10 Circuit case, 472 F.3d 662, 666.

11 So I'd like to ask the defense counsel, aside
12 from these two exceptions, the extradition treaty or the
13 shocking outrageous conduct, are there any other exceptions to
14 this doctrine, Mr. --

15 MR. CIVILLE: If I could have just one moment,
16 Your Honor.

17 THE COURT: Yeah.

18 MR. WALSH: Your Honor, if I may.

19 THE COURT: Yes, Mr. Walsh, you may proceed.

20 MR. WALSH: Your Honor, this is just for clarity
21 of the record. And I think it would have been an aspect that
22 might have been developed if we were able to pursue some more
23 discovery, what I understand the Ninth Circuit *Anderson*
24 exceptions to the *Ker-Frisbie* Doctrine look for an extradition
25 treaty and look for, perhaps, outrageous conduct.

1 THE COURT: Right.

2 MR. WALSH: But we would also ask for -- again,
3 for clarity of the record of the Court, the International
4 Covenant on Civil and Political Rights, the United States is a
5 party to that treaty -- to that covenant, as is the Maldives,
6 and we would say Article 9 and Article 13 of that
7 convention --

8 THE COURT: Of the international what? I'm
9 sorry.

10 MR. WALSH: The International Covenant on Civil
11 and Political Rights --

12 THE COURT: Mm-hmm.

13 MR. WALSH: -- of which the United States is a
14 party, as is the Maldives. While that is not an extradition
15 treaty that exists between the United States and the Maldives,
16 since both -- since both the United States and the Maldives
17 are party to that convention, and Article 9 of that convention
18 lays out certain rights for arrestees and Article 13 of that
19 convention specifically prevents the expulsion without
20 judicial process of somebody, as the defendant is here, from
21 the Maldives, we would say that that would fall under the
22 *Anderson* exceptions and *Ker-Frisbie*. That would be the only
23 other thing we would add.

24 THE COURT: Is there any federal case law that
25 specifically addresses that International Covenant of Civil

1 and Political Rights such that it would require the Court to
2 divest itself of jurisdiction because it violates customary
3 international law?

4 MR. WALSH: No, Your Honor. I -- I am -- but,
5 again, Your Honor, this has -- because of the time constraints
6 that we've been dealing with, this aspect of briefing was
7 never fully completed. But I'm not going to misrepresent
8 anything to the Court. The ICCPR is dealt with by federal
9 districts in various challenges that various litigants have
10 brought. As to the specific question as to whether or not the
11 ICCPR carves out a new area of law under the Ninth Circuit
12 jurisprudence here, I don't know the answer to that. All I
13 would respectfully submit to the Court is what Mr. Civile
14 said earlier, which is this is a moving area of law, this is a
15 moving area of jurisprudence. So I think each juris, as these
16 issues come up, will look toward international law and try to
17 see, is this what the Ninth Circuit meant when we're looking
18 for the violations of the international treaties.

19 And I'll just give a recent example to the Court
20 about that. Previously, in the United States of America, we
21 executed juveniles. We executed juveniles. States allowed
22 the execution of juveniles. Various international covenants
23 and conventions were put together that laid out what seemed to
24 be a developing norm of customary international law saying you
25 don't do that. And eventually, the United States of America,

1 our Supreme Court -- I don't remember the citation, Your
2 Honor. I apologize, but I'll submit it to Court. The United
3 States Supreme Court eventually said, well, as we look toward
4 the rest of the world -- again, the development of law -- we
5 are the only nation that is around that still does this, so
6 we're going to look toward some of that law and then we will
7 lay down a new tentative law. We don't execute juveniles
8 anymore in the United States.

9 So what we're urging is this sort of continual
10 analysis of what's going on in the rest of the world. And we
11 think this is one more thing to add to our papers, that when
12 the Ninth Circuit in *Anderson* says look toward the violation
13 of a treaty -- look toward the violation of an extradition
14 treaty, we think the ICCPR would fit into that category. And,
15 again, Your Honor, there is no extradition treaty between the
16 FSM and the United States. There is no extradition treaty
17 from the RMI and the United States. That doesn't mean that
18 there isn't judicial processes that exist, and it doesn't mean
19 that there is a codified international law that would be
20 violated if a kidnapping occurred. So I think because the
21 United States and the Maldives are both parties to the ICCPR,
22 we'd submit that that would be something the Court should
23 consider when trying to figure out if there's an exception
24 here under the *Ker-Frisbie* doctrine. Thank you.

25 THE COURT: Okay. All right. Very well. Let me

1 just ask Mr. -- Mr. Morgan, from the justice department, do
2 you want to respond to that -- this particular argument in
3 question that the Court had?

4 MR. MORGAN: Yes, Your Honor. Noting that this
5 is the first time this particular treaty has ever been
6 mentioned at any point in the litigation --

7 THE COURT: Right.

8 MR. MORGAN: -- I would note that my
9 understanding is, that treaty is not self-executing, so it
10 would confer no rights upon any individual defendant. It
11 would simply be a diplomatic matter between the states. More
12 importantly, the United States Supreme Court decision in
13 *United States v. Alvarez Machain* makes quite clear that only
14 the violation of an extradition treaty can be an exception to
15 the *Ker-Frisbie* doctrine. Any other alleged violation of
16 international law will not suffice as an exception to
17 *Ker-Frisbie*. That's the square holding of the United States
18 Supreme Court.

19 THE COURT: Okay. Very well. So -- okay. The
20 Court finding is that defense counsel has not provided any
21 particular case law or federal legal authority to support this
22 particular argument.

23 The Court will now examine the defense's other
24 argument on personal jurisdiction, whether this Court lacks
25 jurisdiction because the manner in which Mr. Seleznev was

1 arrested constitutes shocking and outrageous government
2 conduct amounting to a due process violation. As noted
3 earlier, shocking and outrageous governmental misconduct
4 amounting to due process -- to a due process violation is one
5 of two exceptions to the *Ker-Frisbie* doctrine. I will not
6 concern myself with the other exception to the doctrine
7 because, as I understand it, both parties agree that there is
8 no extradition treaty between the United States and the
9 Republic of the Maldives; correct? U.S. Attorney?

10 MR. MORGAN: Yes, Your Honor.

11 THE COURT: And defense?

12 MR. CIVILLE: Yes, Your Honor.

13 THE COURT: All right. Very well.

14 So Mr. Seleznev alleges the following with
15 respect to the manner in which he was arrested: On or about
16 July 5, 2014, the U.S. Secret Service agents detained him at
17 the Ibrahim -- Ibrahim Nasir International Airport, more
18 commonly known as the Male International Airport, as he was
19 boarding -- preparing to board a commercial airline scheduled
20 to depart at approximately 11:55 a.m., local time, to Moscow.
21 They informed him that he was under arrest. Then a U.S.
22 Secret Service agent separated him from his partner and her
23 minor child. They confiscated his mobile phone and laptop and
24 prohibited him from having any communication with his family,
25 prohibited him from making telephone calls, placed him in a

1 confined holding area, searched his person, physically pushed
2 him on to a couch and instructed him to remain seated,
3 presented him with a copy of an indictment originating from
4 the Western District of Washington, informed him that he was
5 under arrest and handcuffed him. Therefore -- thereafter,
6 Mr. Seleznev was led from the holding facility in the airport
7 onto a private jet that was flown to Guam -- Guam.

8 Upon arrival on Guam, Mr. Seleznev was
9 transferred into the custody of the United States Marshal
10 Service and he was permitted to make one telephone call. He
11 contends that -- that is, Mr. Seleznev contends that he was
12 never taken into custody by law enforcement officials of the
13 Republic of the Maldives based on the Red Notice issued by
14 INTERPOL.

15 So I want to ask defense and prosecution to
16 present their argument on the following:

17 Assuming Mr. Seleznev's factual allegations are
18 all true, including the statements made by.
19 Mr. Civile earlier today, what constitutes shocking and --
20 what constitutes a shocking and outrageous arrest? I'd like
21 the counsels to focus their argument on this particular issue.
22 So we'll start with defense counsel, and then I'll hear from
23 prosecution after that.

24 And again, Counsels, please make sure that you
25 focus on, you know, shocking and outrageous as defined by the

1 federal courts, and in particular the Ninth Circuit and the
2 United States Supreme Court, such that it would require the
3 Court to divest its personal jurisdiction over the defendant.

4 Okay. Before you do that, Mr. -- Mr. Civile,
5 give me a couple minutes. I'm going to check about my jury
6 trial, the jurors. But you can get ready.

7 (Pause.)

8 THE COURT: Okay, Mr. Civile. You may proceed.

9 MR. WALSH: Thank you, Your Honor.

10 (Pause.)

11 (Judge conferring with clerks.)

12 (Pause.)

13 MR. CIVILLE: Oh, I'm sorry.

14 THE COURT: That's okay.

15 Go ahead. You may proceed. So let's talk about
16 your argument on the shocking and outrageous arrest here.

17 MR. CIVILLE: Okay. Your Honor, I'll start with
18 the -- with the comment -- and I understand your ruling. I'm
19 not challenging your ruling at this moment, but we are working
20 on an incomplete record and we think -- and that was why
21 discovery was so important, was to be able to present a
22 complete record. And -- and we just -- we have bits and
23 pieces of what happened there, but the full story of what
24 happened in the Maldives, we don't know because we haven't
25 received the documents. The government has provided us the

1 evidence it plans to use today, but it hasn't provided us the
2 other discovery --

3 THE COURT: Mm-hmm.

4 MR. CIVILLE: -- that we requested, and so we're
5 handicapped by that. But the record as you've read it -- the
6 facts that you've read into the record thus far, Your Honor,
7 we would suggest are incomplete. And the reason they are --
8 sorry, Carm. The reason they are incomplete is that they
9 leave out, basically, most of the facts the defendant alleges
10 in this case, and those would include that the U.S. agents
11 went to the Maldives, that they did not have an INTERPOL Red
12 Notice at the time, that they either directly -- and we don't
13 know yet the answer to this -- they either directly or through
14 Maldivian authorities applied for an arrest warrant through
15 the Maldivian court, which is, of course, the proper thing to
16 do, and that was denied. We don't know the full reasons -- or
17 we don't know the reasons for the denial. And that the United
18 States -- and we don't know what representations the United
19 States made to obtain or to apply for that arrest warrant.

20 And that's -- the *Struckman* court, I think, makes
21 it pretty clear, Your Honor -- the Ninth -- this circuit has
22 made it pretty clear that those kind of representations are
23 important to the shock of the conscience test. The facts that
24 would illuminate what sort of representations or
25 misrepresentations or inaccurate representations or even

1 outright lies, those are -- that's information that is
2 critical and relevant to a shock the conscience test.

3 We also think the evidence would -- will show
4 that we -- we, through discovery, if we're able to get it --
5 but we've presented what we do have to show that after being
6 denied judicial relief in the Maldives through the normal
7 appropriate process, that somehow the United States was able
8 to convince other Maldivian authorities to cooperate in
9 allowing them to directly arrest Mr. Seleznev in the Maldives
10 when he had not been taken into custody by the Maldivians. He
11 had not been issued a detention order. And the United States
12 later lied about that. We think the United States later lied,
13 because this is the kind of thing -- of course there's an
14 outcry, and it becomes -- you know, it's not CNN News, but it
15 is -- it is a matter of international comment. And the United
16 -- and apparently the Secret Service felt sufficiently
17 concerned about what happened that they -- they issued --
18 their press officer gave -- issued a press release on it and
19 said, oh, well he was -- he was removed -- or not removed...

20 THE COURT: Expelled?

21 MR. CIVILLE: Expelled. And we believe that that
22 wasn't true, that that was -- the U.S. was simply
23 misrepresenting what happened there. Because they -- okay.
24 And what do you do when you have, you know, a criminal case
25 like we're going to start? Somebody -- if somebody

1 misrepresents something, there's an inference that can be
2 drawn that it is -- it is proof of -- the inference is that if
3 you lie about something, it is an indication of guilty
4 knowledge, that you know you did something wrong and so now
5 you put a spin on it; or in this case, it appears just flat
6 out you make stuff up: Oh, he was -- he was removed. Yeah, we
7 picked him up after he was removed. And we think that's
8 absolutely not true. He wasn't removed. The U.S. guys went
9 into the airport, and they obviously had to have some
10 cooperation from the Maldivian police or the airport people,
11 and they just grabbed our boy; plain and simple, arrested him.
12 We had a declaration from an eyewitness who said the Maldivian
13 authorities didn't do anything. I mean, they were watching,
14 and the U.S. agents did everything.

15 The Red Notice, which is now purportedly being
16 used to justify the --

17 THE COURT: Isn't that -- that's allowed under
18 U.S. law, isn't it, just to go in and abduct someone?

19 MR. CIVILLE: No, Your Honor. I don't think -- I
20 don't think those agents had -- U.S. agents, I don't think
21 they had the authority to arrest in the Maldives. And -- but
22 more importantly, I don't -- okay. Now you're -- I don't
23 think they had the right to circumvent the Maldivian judicial
24 system. And interestingly, the Red Notice -- okay, we are
25 apparently part of this INTERPOL system by some agreement by

1 the U.S., and the Red Notice provides -- you know, we make the
2 representation -- and I'll throw it up on the screen here if I
3 can.

4 THE COURT: Okay. We'll have it marked as an
5 exhibit, please. What do you want to call this Mr. Civile,
6 Exhibit...

7 MR. CIVILLE: This is, I think, a government
8 exhibit. But it's -- it's also ours. However, the Court --

9 THE COURT: Well, let's just mark it as an
10 exhibit since you're putting up. And then we're going to --
11 the Court will consider that. Exhibit A.

12 MR. CIVILLE: Exhibit A, Your Honor.

13 THE COURT: Okay. Defense exhibit.

14 (Exhibit A marked: Red Notice.)

15 THE COURT: Go ahead.

16 MR. CIVILLE: And this is -- just so -- and this
17 will be the first page of the Red Notice, Your Honor. And
18 then the last page --

19 THE COURT: Okay. So that's Defendant's Exhibit
20 -- okay. So I'm sorry. Are they all the same?

21 MR. CIVILLE: This is all the same document.

22 THE COURT: Okay. So Exhibit A -- what, is that
23 page 2? And that's page 1?

24 MR. CIVILLE: Okay. They're not numbered. Let
25 me see -- 1, 2, 3, 4, 5 -- page 5 of the Red Notice. So the

1 final -- it appears to be the final page of the Red Notice.
2 It provides that -- the U.S. represents that, "The country, at
3 the request of which the present notice has been published,
4 has given assurances that extradition will be sought upon
5 arrest of the person in conformity with its national laws
6 and/or the applicable bilateral and multilateral treaties."

7 There is not an extradition treaty. But as
8 Mr. Walsh noted before, both countries are party to a
9 bilateral convention that, while not self-executing in the
10 United States, nonetheless is -- is an agreement entered into
11 between both countries. And we submit that part of the
12 shocking behavior here is that, okay, we have these
13 agreements, we say do -- we want your help and we're going to
14 abide by your laws, and then when we do abide -- apparently we
15 -- and once again, we don't have -- we haven't received
16 discovery on this, but once again -- so it appears that we did
17 initially do that. And when it turned out not to be a pro
18 forma event when the judge in the Maldives actually had a
19 response -- and we think that response was, no, you haven't
20 given me proper evidence, you haven't supported this
21 adequately yet. That being -- the U.S., instead of continuing
22 to go through the proper legal authorities, the judicial
23 process there, just nabbed the guy, just cut -- just made a
24 deal with the cops in the Maldives and apparently -- well, not
25 apparently. By all evidence -- the only evidence we really

1 have from the eyewitness is that the U.S. grabbed him, nakedly
2 grabbed him, okay. And we believe that that is shocking
3 behavior, shocking in a number of ways, not the least of
4 which, Your Honor -- and this is -- this is -- the Court in
5 *Struckman* foresaw that this is the kind of behavior that is --
6 is becoming more -- certainly is a particular concern to the
7 Court, is that there were lies and misrepresentations or
8 circumvention in this case, deliberate circumvention of the
9 Maldivian judicial process and judicial rulings, then that is --
10 that is behavior which shocks the conscience.

11 THE COURT: But what about the cases that have
12 been cited, Mr. Civile, like the *Matta-Ballesteros* case where
13 there was torture and abduction of the defendant by the U.S.
14 Marshals from the defendant's home in Honduras? And the Court
15 found that that's not so shocking and outrageous to warrant a
16 dismissal. And then *Anderson*, when there's no outrageous
17 conduct, despite the defendant alleging that his -- that the
18 government's conduct in removing the defendant during the
19 pendency of his extradition and citizenship appeals in Costa
20 Rica were ongoing; that was not outrageous. I mean, those --
21 those particular situations even seemed more severe than
22 what's presented here so far.

23 MR. CIVILLE: Your Honor, a couple of things on
24 that. One, in the Honduras case, *Anderson*, I believe that the
25 Court was not convinced that it was done by U.S. agents, that

1 it was done by Honduran police, for one thing.

2 The other -- the other point on this is that is
3 this a dynamic area of the law; the concept of what is
4 shocking is developing. The case -- the Ballesteros case you
5 mentioned really focused primarily on treaty issues. And --
6 and since then, the Ninth Circuit's view on -- on shocking
7 conscience -- shocking behavior has actually evolved since
8 *Ballesteros*, and that's reflected in *Struckman*. *Struckman* is
9 the latest pronouncement by -- in this circuit. And it is --
10 and it is -- it shows an evolution of thought, and that's
11 where -- and that's where the Court said we are troubled, more
12 troubled, and we are not prepared to -- are the lies,
13 misrepresentations -- deceitful conduct is what they're
14 talking about. "We're not prepared to say that blatant lies
15 to a foreign government to induce the foreign government to
16 transfer a defendant when it otherwise would not, could never
17 amount to so shocking and outrageous as to violate due process
18 and require dismissal of pending criminal proceedings in the
19 U.S. in this case."

20 Okay. The Ninth Circuit has clearly said that we
21 are -- we are not -- that the bar is not set at torture. And
22 -- and stop and think about this for a second. The whole
23 concept, the choice of words, "shock to the conscience," what
24 is -- okay. That suggests that, A, you're stepping -- you
25 know, what's our conscience? Our conscience is, I think,

1 understood. Most people would say, "What's your conscience?"
2 Well, it's that inner voice that really tells us right from
3 wrong, that -- the moral compass inside, that shorn of
4 legalisms and complex analytical nuances, it's your gut that
5 tells you -- well, not your gut; your soul that tells you this
6 is right, that's wrong.

7 Okay. So the Court -- I think when they use that
8 phrase "shock the conscience," it's referring to the kind of
9 behavior that -- that -- first, it's telegraphing that the
10 Court is not going to be hung up necessarily on real technical
11 legalisms, that it's looking for something deeper. And the
12 trouble with -- my one trouble with this test is that, you
13 know, whose conscience are they talking about? And -- and the
14 reason that's troubling -- and I think the answer is, of
15 course, it's the idealized reasonable person. Because in
16 day-to-day life, the trouble with consciences is that they
17 become numb. You know, the -- Cambodia. Just dramatic
18 examples, the killing fields of Cambodia. Millions of people
19 killed, and of course there's outrage. But Rwanda, then,
20 30 years later and a million people killed, several million
21 people dispossessed. They're still outraged, but, you know,
22 we're getting kind of accustomed to this. And now, finally,
23 we have Sudan, hundreds of thousands of people killed. But
24 for George Clooney's activism, largely ignored in the world
25 stage. And now Central African Republic, close to a million

1 people killed, several million people displaced, complete
2 anarchy, and it gets almost no coverage. Why? Because our
3 conscience has just become numbed after a while. And we're
4 seeing that now in the -- what's going on in Israel and the
5 Gaza strip. It's just -- okay.

6 That's not the conscience, the numb conscience.
7 And I think that this -- when I argue to a judge, you know, of
8 all people who -- no matter how good-hearted the judge is and
9 how conscientious and moral and I -- no questions on that
10 score -- you see the bottom end of society on a daily basis;
11 the beatings, the murders, you had the Blue House Lounge case
12 here, human trafficking. And your conscience becomes numb in
13 the sense of what is acceptable or not acceptable behavior,
14 what does it take to shock you. I mean, you've seen it all,
15 everything. What -- what can you say? What could I say that
16 would shock you? What could I show you? What photographs
17 could I show you that would shock you? Because you've seen it
18 all.

19 So that test, when we talk about shocking
20 conscience, it's not to the battle-hardened people that,
21 really, we all have become just over the course of life. I
22 think it's really to the reasonable person, what shocks their
23 conscience, what offends their core sense of right and wrong.
24 And, Your Honor, I think that what the Ninth Circuit has said
25 in *Struckman* is that, yes, we're the good -- "we" being the

1 United States, we're the good guys on the world stage. You
2 know, we are the moral beacon. We are supposed to stand for
3 righteousness and truth and the proper way. And what we stand
4 for above all is the rule of law.

5 And so if our agents are going out and lying to
6 people, if they're misrepresenting things to -- to get some,
7 you know -- to get some benefit, if they -- if they run
8 roughshod over the judicial system of co-equal countries,
9 well, then what's the difference? How are we different?
10 We're -- you know, we're standing up -- to put it in the
11 context, you know, we're on the brink of some very serious
12 matters right now globally, and the U.S. is ramping up to go
13 after Russia about shooting down -- its participation in
14 shooting down the Malaysian aircraft. And we are going to
15 take the moral high ground and accuse Russia of arming the
16 militants or the separatists or maybe even firing the
17 missiles. Okay. And Russia has, apparently, tens of
18 thousands of troops poised on the Ukraine border, ready to --
19 we think, ready to invade. And what is our position? We're
20 saying Russia, you have to obey the rule of law.

21 Now, okay. That's on a much larger -- that's --
22 this case is not shooting down the Malaysia aircraft. It's
23 not invading a country. But it's the principle, the rule of
24 law, the respect for the rule of law. So when we stand up in
25 the international forum and demand of Russia that it obey the

1 rule of law, that it respect the law of nations and
2 international law, well, in this small corner of the world, we
3 have said, basically, do as we say, not as we do, and that
4 shocks the conscience. If we can't stand up there with a
5 clear conscience and say, "We obey the law. You should obey
6 the law, too," that shocks the conscience.

7 And that's what I'm suggesting, Your Honor. And
8 that's why it was so important to us to try to develop the
9 record in this case, to get the information we know the
10 government has had -- that we believe the government has, that
11 they never denied having, to show the Court that in this
12 expanding area of the law, the Ninth Circuit has clearly said
13 torture isn't the test anymore. That should be an absolute
14 given. I mean -- so those cases that agonized about torture,
15 we don't have to agonize about that. We're -- we're -- we're
16 evolving, we're progressing, and that's our -- so our point,
17 Your Honor, is that I think the Court needs to -- that what
18 shocks the conscience is duplicity, deception and corruption
19 of another country's judicial process, knowingly participating
20 in the corruption of another country's judicial process or the
21 abrogation of that process.

22 THE COURT: Okay. Any other facts that will
23 constitute shocking and outrageous? Because that's really the
24 test, shocking and outrageous.

25 MR. CIVILLE: Yeah. The facts -- the other --

1 and this is what's more of a context argument, Your Honor, but
2 -- all right. As this area evolves, okay, the Court will --
3 courts will do what they always do, and they'll draw
4 distinctions. And you mentioned the Honduras case and the --

5 THE COURT: *Anderson* case.

6 MR. CIVILLE: -- *Ballesteros* case.

7 THE COURT: Yeah, and *Ballesteros*.

8 MR. CIVILLE: Okay. This is not a case involving
9 terrorism. It's not a case involving violence, murder, a
10 narco-terrorism. This is pretty -- this is, you know -- this
11 is -- the alleged crime does not fall into any of those
12 categories. So in that context where the Court's conscience
13 might not be shocked by us, for example, surreptitiously
14 invading Pakistan to kill Osama bin Laden, okay, because of
15 who Osama bin Laden was and the history of our pursuit him --
16 this is very different. This is a much more mundane sort of
17 case where the behavior then becomes all the more shocking,
18 that we're not now reserving what would otherwise be
19 outrageous behavior for extreme cases, with now becoming the
20 order of business, SOP.

21 Other facts. I think we've talked about the
22 dating on the Red Notice, whether that was properly given.
23 Our belief -- not whether it was properly given; our belief
24 that the Red Notice was pretextual, that whatever had been
25 done had been done before the Red Notice had actually been

1 properly issued. Yeah. And, once again, I just go back to
2 our -- our allegation that we really are looking for discovery
3 for -- to substantiate more fully. You have on the -- that we
4 ignored the judicial process in that country and the -- we've
5 attached the declaration of Ali Naaviz -- Naaviz, N-A-A-V-I-Z,
6 a journalist in the Maldives -- Maldives. I'm sorry, Your
7 Honor. And we've attached both the native language and the
8 English translation, which shows the basis for some of our
9 allegations regarding how this happened factually.

10 We also have submitted a declaration of an
11 eyewitness to the arrest, showing that the U.S. agents just
12 took over inside the Male Airport in the Maldives and --
13 without assistance or any -- really -- I mean, they just came
14 in -- our guy walked in, and he was arrested by U.S. agents,
15 without any Maldivian participation.

16 Let me see if I've hit all the facts, Your Honor.

17 (Pause.)

18 (Consulting with co-counsel.)

19 MR. CIVILLE: The other fact, Your Honor, I --
20 it's in, actually, our client's declaration, is that when he
21 was arrested and still in the territory of the Maldives, he
22 requested to contact -- that the Russian consulate be
23 contacted, and that was not done. So he was denied access to
24 the consulate there.

25 THE COURT: Okay.

1 MR. CIVILLE: Okay.

2 THE COURT: All right. So, thank you,
3 Mr. Civile.

4 MR. CIVILLE: Thank you.

5 THE COURT: So the Court will accept as true for
6 purposes of this motion all the additional factual allegations
7 that you have just made regard -- not only the ones that have
8 been filed through a declaration and/or news articles, but the
9 additional statements made here that the United States agents
10 did not have a proper INTERPOL notice, that it may have been
11 pretextual, that there was an application to the Maldives
12 court, there could have been a violation, and representations
13 made to the Maldives government may have been improper, and
14 that there was no -- potentially no detention order, and that
15 the defendant had been arrested by the U.S. Secret Service.
16 So the Court will accept that as true. And, in particular,
17 all of the filings submitted by defense counsel.

18 Okay. Let me hear from the United States
19 Attorneys, Mr. Morgan.

20 MR. MORGAN: Yes, Your Honor.

21 Accepting the defendant's allegation as true and
22 -- simply for purposes of this motion -- I mean, the
23 government does not concede the allegations in any way -- the
24 facts as alleged do not rise to the level of shocking and
25 outrageous conduct as defined by the precedents which control

1 this Court. The notion that the conduct was shocking and
2 outrageous because the agent effectively made a warrantless
3 arrest in a foreign country, that, as a matter of law since
4 the *Ker* decision, does not rise to the level of shocking,
5 outrageous conduct.

6 I would point out that the *Matta-Ballesteros*
7 case, which defense counsel cited, did indeed involve U.S.
8 agents effecting an arrest of a foreign national on foreign
9 soil. And as the Court has pointed out, the facts in that
10 case were quite severe. The agents arrested him at his home,
11 in a pre-dawn raid, with the assistance of the Honduran
12 military. They put a hood on his head, they bound him, they
13 took him to the airport and spirited him away. And there were
14 also allegations that he was physically abused on the flight.
15 The Ninth Circuit squarely held that those allegations, even
16 if true, did not rise to the level of shocking, outrageous
17 conduct as would justify dismissal of the indictment.

18 With respect to the allegations concerning the
19 circumvention of the Maldivian judicial process, well, that's
20 exactly what happened in the *Anderson* case, which the Court
21 has noted. In *Anderson*, the defendant was attempting to
22 appeal an extradition order and an order depriving him of
23 Costa Rican citizenship, so he was attempting to utilize the
24 Costa Rican judiciary to vindicate his rights in that state.
25 The United States took him and removed him to the United

1 States. The Ninth Circuit held that that was not outrageous
2 conduct.

3 With respect to allegations that the United
4 States might have misrepresented some facts to the Maldivian
5 authorities, I would want to point out that there is sort of a
6 logical disconnect with the -- supposedly the U.S. officials
7 went to a Maldivian judge to get a warrant and they didn't get
8 a warrant. How the -- whatever they said to that judge, how
9 that could have been outrageous conduct, since they didn't get
10 a warrant, that's sort of a logical disconnect there because
11 they didn't utilize the Maldivian process. But that's an
12 aside.

13 The fact of the matter is in *Struckman*, the case
14 upon which the defendant so repeatedly rely, that was a case
15 where agents affirmatively lied to the Panamanian government,
16 secure that government's cooperation, and having that
17 defendant expelled from Panama and rendered into the United
18 States custody. The Ninth Circuit held that those allegations
19 were not sufficient to rise to the level of outrageous
20 conduct.

21 And on a more general level, there's just --
22 there's something counterintuitive about the argument the
23 defense is presenting. Essentially, they want to say that a
24 misrepresentation can be shocking, outrageous when forcible
25 rendering cannot, and that just can't be right. It can't be

1 the case that you can literally kidnap someone by force at
2 gunpoint in a foreign country and have that be sanctioned by
3 the United States Supreme Court; and yet a misrepresentation
4 to a foreign government somehow surpasses that in conscience
5 shocking behavior. That -- that simply isn't -- that just
6 cannot be right.

7 And I would also point out that there are other
8 cases in which the United States has purportedly circumvented
9 the local authorities. One of those is *United States v.*
10 *Valot*, which is cited in our most recent filing. This is a
11 case where Thai authorities are -- arrested the defendant, and
12 rather than afford him the benefits of Thai law and Thai
13 extradition proceeding, simply took him to the airport and,
14 over his objections, handed him over to U.S. -- to the DEA
15 agents who were waiting at the airport. The Ninth Circuit
16 held that that was not shocking and outrageous conduct.

17 So I think that there are circumstances far worse
18 than anything Mr. Seleznev has alleged, and the Ninth Circuit
19 and both the -- and the Supreme Court have made quite clear
20 that they are not enough to rise to that level. Indeed, as
21 the government pointed out earlier, there is not a single
22 reported decision in which any court in the United States has
23 ever held that the government has engaged in sufficiently
24 shocking conduct to justify divestiture of jurisdiction and
25 dismissal of an indictment.

1 MR. CIVILLE: Your Honor, if I could respond to
2 that?

3 THE COURT: Yes, you may.

4 MR. CIVILLE: The government's reliance on
5 *Matta-Ballesteros* is interesting. That was a 1995 case.

6 THE COURT: Right, okay.

7 MR. CIVILLE: It predates the *Anderson* and
8 *Struckman* decisions by about ten years, and it doesn't reflect
9 the way that the Ninth Circuit's thought in this area has
10 evolved. In *Matta-Ballesteros*, the Court there did not -- did
11 not frame the -- did not recognize the *Ker-Frisbie* exceptions
12 in the manner that the Ninth Circuit now recognizes those
13 exceptions.

14 What's interesting about the *Matta-Ballesteros*
15 exception -- or decision, Your Honor, is that there -- and
16 once again, Your Honor, your decision this morning is not
17 etched in stone, and you might want to consider that. The
18 district court conducted a limited evidentiary hearing. Okay.
19 Once again, as in *Struckman* --

20 THE COURT: This is a limited evidentiary
21 hearing.

22 MR. CIVILLE: No, no. A limited evidentiary
23 hearing, Your Honor, is like where we put on witnesses --

24 THE COURT: This is a limited hearing. Let's put
25 it that way.

1 MR. CIVILLE: It's a limited hearing, okay.

2 THE COURT: And I'm going to assume for the sake
3 of argument that your facts are true for purposes of this
4 hearing. And if the Court finds that the conduct is not
5 shocking and outrageous, you certainly will have, I believe,
6 the right to proceed forward after further discovery before
7 the transferee court, before the indicting court, to bring
8 this issue up again.

9 MR. CIVILLE: I understand Your Honor's position
10 on that. And our concern, of course, is by doing that, you
11 are exercising jurisdiction over Mr. Seleznev, and that's the
12 threshold question which we think --

13 THE COURT: I understand what you're saying.

14 MR. CIVILLE: Okay. But in any event, in
15 *Matta-Ballesteros*, there wasn't at least an opportunity for an
16 evidentiary hearing. And it's not clear to me, but the manner
17 in which that's -- well, no. It is clear. So the Court
18 actually heard testimony and -- and -- and that would imply
19 that there was an opportunity to really delve into the facts.
20 And that's why I think it's so important to be able to have a
21 -- a more fully developed factual record. I appreciate the
22 Court accepting what we say is true, but that's -- the trouble
23 is, we just -- we don't know everything that's out -- we -- we
24 may have much more -- I'm concerned we have an even more
25 compelling argument or would have an even more compelling

1 argument if we saw the discovery we requested. That -- I
2 guess that's -- you know, when you put the evidence on the
3 table, the actual papers, the e-mails, correspondence, the
4 reports, that's where you really see the full extent. And
5 that's where you get -- have the opportunity to decide, oh,
6 either this is shocking or it's not.

7 Okay. I don't know if that answers your question
8 or --

9 THE COURT: Did you -- I mean, do you have
10 anything to -- to respond to in relation to what U.S.
11 Attorney, the Justice Department, has just indicated?

12 MR. CIVILLE: I think the Justice Department is
13 simply -- yeah. My final point on that is, the Justice
14 Department is not acknowledging the state of law as it has
15 been recognized in this circuit --

16 THE COURT: Well, I don't know about that. I
17 mean, the -- you know, I'm looking at all the case law,
18 Mr. Civile. And, I mean, isn't it true -- even if what
19 you're saying is that the world, the international world, the
20 academias and others, have matured in terms of this area of
21 law, it -- you -- I'm not -- I'm not able to ignore, neither
22 are you -- we're not able to ignore the United States Supreme
23 Court decisions and the Ninth Circuit decisions that allow
24 forcible abductions on foreign soil. I mean, that's basically
25 -- they allow it.

1 MR. CIVILLE: Your Honor --

2 THE COURT: That's -- you haven't shown me
3 anything that doesn't allow it, other than -- unless it's
4 shocking and outrageous and it doesn't rise to that level and
5 so forth. But, I mean, that's the case law, and the Court is
6 duty-bound to follow that case law.

7 MR. CIVILLE: Okay. And, Your Honor, I think my
8 -- I think my response to that is, let's assume for a moment
9 that there are circumstances under which forcible rendition is
10 lawful, okay. And certainly --

11 THE COURT: Well, you're not disputing any of the
12 cases and the facts that Mr. Morgan has just cited to, are
13 you?

14 MR. CIVILLE: Well, I'm not disputing the holding
15 in those cases. I am disputing that earlier -- for example,
16 *Ballesteros* now has to be read in conjunction with *Struckman*
17 -- *Anderson* and then *Struckman*. And you can't read
18 *Ballesteros* and *Anderson* and *Struckman* and say the law is
19 fixed and rigid in this area. Those cases represent a --
20 demonstrate a real progression of thought in this circuit, and
21 *Struckman* being the most recent declaration of where this
22 circuit has evolved to on this. In -- okay.

23 So -- so now the government comes -- so it's not
24 open season out there for agents -- U.S. agents running around
25 the world. They can't just run amuck. They can't -- saying

1 just anything you have to say to -- to trick somebody into
2 getting into the van with you or to trick a government into
3 cooperating with you is not acceptable behavior. You know, I
4 understand from -- for the law enforcement guys, of course
5 they -- anything. They're still complaining about *Miranda*,
6 you know, for -- you know, anything that they see as
7 infringing on their absolute right to do whatever they want,
8 they resist. But that's not what the rule of law is about, of
9 course. And the rule of law is about having restrictions and
10 limits on what you can do.

11 And in this arena, it's about respecting the
12 judicial process. I didn't really understand the government's
13 argument, well, okay, we tried to -- maybe I simply
14 misunderstood him. He doesn't see the logic, well, if the
15 local government -- if the local judiciary didn't allow us to
16 -- give us the arrest warrant, okay, we'll just grab the guy,
17 was apparently the government's position. We don't know why
18 the local judiciary denied that warrant. And very
19 importantly, we don't know -- and the government has this
20 information in confident, because they must have gotten
21 reports and sent reports on this. Did the judge in the
22 Maldives say, under our law, this person is lawfully in the
23 Maldives, and if the U.S. wants him, you have to bring him
24 before me first to see if there is -- you know, under the
25 Maldivian constitution, what rights he may have here. So did

1 the U.S. ignore that?

2 Now, this is -- you know, this is another area
3 that's come up. And *Struckman*, I think, is -- it represents
4 by this circuit a recognition -- and I don't think the Court
5 needs to anticipate the Supreme Court. We just have to follow
6 the law in this circuit. The law in this circuit is really --
7 and I think really clear. You look at -- okay. If -- if
8 there is evidence that the judge -- that the U.S. consciously
9 --

10 THE COURT: Lied to everybody? Lied to
11 everybody?

12 MR. CIVILLE: Lied to everybody, did something --
13 no, not just -- no, it's not just -- that's bad enough. But
14 now you go through the process. It appears we actually did
15 the right thing. We went down there and somehow applied for
16 an arrest warrant. Okay. Well, if you -- and then that
17 didn't turn out the way we liked it, so we said, well, enough
18 of this pretense. We're not going to abide by the arrest
19 warrant or the judicial process of the Maldives. Grab the guy
20 in the Maldives, on Maldives territory. Well, that's a very
21 cynical view of -- and that is shocking, Your Honor. Think
22 about that. Does that offend our innate sense of right and
23 wrong, that -- you know, your kid comes up and says, "I want
24 an ice cream cone from the refrigerator."

25 "No, you can't."

1 And you turn your back, and the kid goes and gets
2 the ice cream cone.

3 "Well, I said no."

4 "Well, I know you said no. I went through the
5 right process, Mom. I asked you. You said no, so what could
6 I do except get it myself."

7 That's wrong. We know that's wrong. We would
8 tell a child that's wrong, that you have to respect the
9 process, respect the rule of law. And that's what I think the
10 government just can't come to grips with, is that the Ninth
11 Circuit is -- is -- that's what *Struckman* is really saying.

12 THE COURT: Yeah, but *Struckman* did cite the
13 *Matta-Ballesteros* case with approval. They did do that.

14 MR. CIVILLE: They did, Your Honor. But they
15 went beyond that, though. They clearly went beyond that. I
16 mean, they didn't overrule *Ballesteros*, but they went beyond
17 that. And they certainly clarified, as *Anderson* had done.
18 *Matta-Ballesteros*, the standard in that case -- announced in
19 that case was, I think, much less clear than the very precise
20 language in both *Anderson* and *Struckman*. The analytical
21 framework -- in *Struckman* and *Anderson*, they both said, okay,
22 we start with the vulnerable principle that -- venerable
23 principle -- sorry -- that the manner by which a defendant is
24 brought to trial does not affect the government's ability to
25 try him, citing *Matta-Ballesteros*, citing *Ker* and *Frisbie*.

1 Okay.

2 So the Ninth Circuit says, okay, that's our
3 starting point. And you're right; they've --
4 *Matta-Ballesteros* is right in -- on that starting point. But
5 then -- now the Ninth Circuit says we have however recognized
6 exceptions to the *Ker-Frisbie* doctrine -- and that would also
7 be *Matta-Ballesteros*, they could have added -- if either, one,
8 the transfer violated an extradition treaty or the United
9 States government engaged in misconduct of the most shocking
10 and outrageous kind to obtain his presence.

11 And so that goes beyond *Matta-Ballesteros*, and
12 that is now the law in this circuit. And I think -- and the
13 other cases we have cited, so misconduct of the most shocking
14 and outrageous kind is -- and has been applied. The standard
15 or the other -- and this goes back to Justice Frankfurter,
16 actually. Does it shock your conscious, when it says the most
17 shocking kind. And Justice Frankfurter, a towering
18 conservative on the board, a legendary conservative, said,
19 "Does it shock your conscience?" The average, the -- kind of
20 very patrician way, he said, "to the English-speaking people
21 of the world, would it shock our conscience."

22 And that's the standard that now exists, Your
23 Honor. And it's not tethered to torture. The government, as
24 a fallback position, wants to tether all of this to torture
25 and say anything we do is okay as long as we don't torture

1 you. And that, I submit, is not the law any longer.
2 *Struckman* is -- has certainly laid rest that notion that only
3 torture shocks the conscience. Because if that's the
4 standard, then that's the numbed conscience -- conscience that
5 I was describing. If we've got -- if we are so beaten down by
6 life that our consciences can only be shocked by horrible,
7 grizzly torture stories, then we have a real problem. And
8 that's not what the standard is.

9 THE COURT: Okay. Thank you.

10 MR. CIVILLE: Thank you.

11 THE COURT: All right. The Court has considered
12 the federal case law, in particular the Ninth Circuit case law
13 and the U.S. Supreme Court, that would require the Court to
14 divest its personal jurisdiction over the defendant. Based on
15 what has been presented to the Court thus far -- and the Court
16 is assuming that all the factual allegations as Mr. Seleznev
17 has indicated in his declaration and all the other
18 declarations submitted by the other witnesses and all the
19 other exhibits submitted by defense -- assuming all of that is
20 true, the Court finds that the Court cannot simply ignore
21 federal law, and the Court finds that these allegations thus
22 far are not shock -- so shocking and outrageous that it would
23 warrant this Court to divest its jurisdiction. Accordingly,
24 the Court finds that because the allegations of his arrest are
25 not so shocking and outrageous as submitted, the Court finds

1 that it does have personal jurisdiction over Mr. Seleznev.
2 His motion for discharge and release is hereby denied, and the
3 Court will proceed forward with the identity hearing, the Rule
4 5 hearing.

5 The Court notes, however, that its decision on
6 the motion to preclude Mr. Seleznev from reasserting the same
7 allegations -- it will not preclude him from reasserting the
8 same allegations before the United States District Court for
9 the Western District of Washington for further consideration
10 by that court after full and additional discovery if counsels
11 are going to proceed forward that way. So the Court will now
12 proceed with the Rule 5 hearing.

13 MR. CIVILLE: Your Honor, may we approach for a
14 moment?

15 THE COURT: Yes.

16 (Sidebar.)

17 MR. CIVILLE: Thank you, Your Honor. Thank you
18 for giving me so much time. Your Honor, in anticipation of
19 the ruling, I have discussed with Ms. David -- as you know, we
20 have a jury to pick today.

21 THE COURT: Right.

22 MR. CIVILLE: If we could do -- the Rule 5
23 hearing -- I'm not sure, in light of some of the other
24 evidence we have, how quickly that's going to go, and my
25 suggestion, my request, would be that we proceed with picking

1 the jury and perhaps and do the Rule 5 hearing at 8:30 or 9
2 o'clock tomorrow.

3 MS. DAVID: Your Honor, we would like to proceed.
4 The Court has indicated that in its earlier order, the
5 government is proceeding pursuant to that -- wishes to proceed
6 pursuant to that order. We have the binders ready to proceed,
7 to the Court, to counsel and to the witness.

8 THE COURT: We might have some issues with
9 jurors. We may not have enough jurors.

10 THE CLERK: You can get additional jurors there.

11 THE COURT: But we don't have any right now. We
12 don't have any additional -- oh, we can just bring them in
13 later?

14 LAW CLERK: Bring in another set, so if we don't
15 have enough right now, we can bring in another set.

16 THE COURT: We may not have -- I don't think we
17 -- we may not have enough jurors anyway right now anyway to
18 proceed forward. I've got to talk to the counsels. Why don't
19 we -- let me talk to the -- I think we should proceed forward
20 this afternoon. It's not that difficult, is it?

21 MR. CIVILLE: Is anything in this case not
22 difficult?

23 THE COURT: No, no. I mean but you know, we're
24 trying --

25 MR. CIVILLE: Okay.

1 THE COURT: -- to, you know, give you your day in
2 court.

3 MS. DAVID: We didn't want to distribute the
4 binders because we were obviously waiting for the Court's
5 ruling, but I do have the judge's copy, the defense copy and
6 the witness copy.

7 THE COURT: How big is it? It shouldn't be that
8 big.

9 MS. DAVID: It's not, Your Honor. It's -- there
10 are government exhibits that Mr. Civile has already received.
11 They're designated 1 through 13, except there are 20 exhibits;
12 some are like 13-A, 13-B.

13 THE COURT: Have you given him all of these
14 exhibits?

15 MS. DAVID: Yes.

16 THE COURT: So he has received all of them
17 previous to today?

18 MS. DAVID: Correct, Your Honor.

19 THE COURT: Oh, okay. So it's not like anything
20 new.

21 MR. CIVILLE: I don't think -- I hope not. She's
22 very good about that.

23 THE COURT: So why don't we -- we'll go ahead and
24 proceed forward with the identity hearing this afternoon.

25 MR. CIVILLE: Okay.

1 THE COURT: What I'm going to do with the jury is
2 I'm going to talk to the other defense counsels, so we'll let
3 you -- we'll give you -- how many -- you want to start at
4 1:15?

5 MR. CIVILLE: Okay.

6 THE COURT: That will give him a chance to have
7 lunch. All of you guys have time for lunch. Then I'll talk
8 to your other counsels, your co-counsels, and we might move
9 out our jury selection 'til August -- the day that we are
10 going to start opening, maybe that date. Okay.

11 MR. CIVILLE: Thank you, Your Honor.

12 THE COURT: All right. Because of the numbers of
13 jurors.

14 MS. DAVID: So that would be August 11th, right,
15 Your Honor?

16 THE COURT: That's right. August 11th. Yeah.

17 MS. DAVID: Thank you.

18 THE COURT: I'll look at the date. Hold on, you
19 guys. Why don't you talk to your client and then talk to
20 your agent. And we will go proceed this afternoon. Okay.

21 MS. DAVID: The identity hearing will proceed at
22 1:15?

23 THE COURT: Yeah. Definitely, yeah.

24 (Off the record discussion with the Court and law
25 clerk.)

1 THE COURT: Okay. We're good? I'm gonna talk to
2 -- I'll call up the other case real quick.

3 MR. CIVILLE: Your Honor, so we're not gonna pick
4 the jury today?

5 THE COURT: We're not going pick the jurors. We
6 don't have enough jurors. You know what --

7 MR. CIVILLE: I didn't think we were going to.

8 THE COURT: Well, I was -- we already called
9 them. We only have 49. We only have 49. So I can talk to
10 them and just say, you know, because of the storm, they just
11 -- we just don't have enough.

12 MR. CIVILLE: Okay. Can I -- I'm fine to do Rule
13 5. Can we start it at 2:00 instead of 1:15?

14 THE COURT: Sure. Two is fine. We'll call --
15 (End of sidebar.)

16 THE COURT: Okay, let me just -- we're back on
17 the record.

18 What we're going to do is -- I know there's a
19 request to continue the identity hearing, but the Court will
20 deny that request and we will proceed forward this afternoon
21 at two. We'll allow Mr. Seleznev to have lunch.

22 And then let me just talk to the other attorneys,
23 Mr. Civile, Ms. David, Mr. Gavras and Mr. Van de veld. Okay.
24 So because of the typhoon Condition of Readiness 1 yesterday,
25 the Court had summoned in 100 jurors for our trial for jury

1 selection and only 40 -- how many appeared? Forty-nine have
2 appeared. That's not enough to proceed forward with the
3 challenges for cause. It's enough to just like -- if you only
4 had -- okay. If we have 49 jurors, if we only had 3
5 challenges for cause -- if I could just assume that there's
6 only 3 challenges for cause and that you exercise all your
7 peremptory challenges, doing the mathematics, we'd need 45
8 jurors here. So there's just no way that we would have enough
9 to proceed forward, so what the Court is gonna do, because of
10 an act of God, we're not able to get all the jurors in. I'm
11 going to move out the jury selection until next week, and that
12 will give us enough time to summons in -- no. The following
13 week. What day do we have that set for?

14 (Discussion with clerks.)

15 THE COURT: August 11th -- but she had needs
16 until August 12th. So my jury administrator needs until
17 August 12th, which is Tuesday, to proceed forward with jury
18 selection. We were going to proceed forward with opening
19 statement anyway on August 11th, as you will recall, on
20 Monday, but the Court's going to have to move that to
21 August 12th.

22 MR. VAN DE VELD: Your Honor, as I explained when
23 we last met --

24 THE CLERK: Microphone, please. Thank you.

25 MR. VAN DE VELD: As I explained when we last

1 met, I have a trial scheduled before Judge Cenzone in Superior
2 Court on a criminal sexual conduct case, and that was --
3 that's scheduled to start on the 5th. Because the jury
4 selection in this case was going to start before that, I have
5 a basis for a motion for it to be continued. But if we don't
6 start the jury selection until the 12th, that case will have
7 started beforehand and I will not be complete with it by the
8 12th. And so, you know, I really need to have the jury
9 selection on this case start before the 5th; otherwise, I'm
10 gonna have to ask the Court to continue this matter.

11 THE COURT: Well, I have a call out to Judge
12 Cenzone. Have you spoken to her since then?

13 MR. VAN DE VELD: Yes. And she said, "Well,
14 submit your motion." But I haven't heard anything from the
15 chief judge, so...

16 THE COURT: Right. Okay. Yeah. All right. So
17 -- no, no. I did submit a -- I mean, we do have a call out to
18 her, and I have -- I don't know if she called me yesterday. I
19 haven't checked my calls because we were in court yesterday.
20 So I will get ahold of her.

21 But what we're going to do as of right now -- let's
22 just do this, and I'll try to work out something between
23 myself and Judge Cenzone-Duenas, because this is an older case
24 than -- as you've represented to me. Correct, Mr. --

25 MR. VAN DE VELD: That's correct.

1 THE COURT: Okay. So let me get ahold of her.
2 But as of right now, the Court will -- based on the inability
3 to get enough jurors to come in today because of the storm,
4 the Court will continue the jury selection until August 12th,
5 and that will give the jury administrator enough time to call
6 in the additional jurors. In the meantime, we will try to
7 work out the situation with you, Mr. Van de veld, sometime
8 this afternoon. Okay?

9 MR. VAN DE VELD: Thank you.

10 THE COURT: Okay. Very well.

11 MR. CIVILLE: Thank you, Your Honor.

12 THE COURT: Mr. Civile and Ms. David, I'll see
13 you all at 2 o'clock. We'll begin the identity hearing at
14 that time. Thank you.

15 MR. CIVILLE: Thank you, Your Honor.

16 THE COURT: Mm-hmm. We'll get the -- okay.
17 Thank you, Counsels, on the phone.

18 MR. MORGAN: Thank you, Your Honor.

19 THE COURT: Talk to you soon.

20 (Recess taken at 12:01 p.m.)

21 (Back on the record at 2:12 p.m.)

22 THE CLERK: Magistrate Case No. 14-00056, *United*
23 *States of America v. Roman Seleznev*; identity hearing.

24 Counsel, please state your appearances.

25 MS. DAVID: Good afternoon. Marivic David for

1 the United States, and Agent David Iacovetti from Secret
2 Service.

3 THE COURT: Okay. Good afternoon. You may be
4 seated.

5 MR. CIVILLE: Buenas again, Your Honor. Patrick
6 Civile; Joshua Walsh; the person being detained as the
7 defendant, Roman Seleznev; and our interpreter, Polina
8 Collins, are all present.

9 THE COURT: Okay. Good afternoon. You may be
10 seated, everyone.

11 MR. CIVILLE: Your Honor, as a preliminary
12 matter, if I may...

13 (Pause.)

14 (The Court conferred with courtroom deputy.)

15 THE COURT: Okay. Also present on the phone,
16 Mr. Freedman, you're there and I -- is that correct?

17 MR. FREEDMAN: I am. In Seattle, Your Honor.

18 THE COURT: Very well. And Mr. Ray and
19 Mr. Goldin, you are also present for the defense team?

20 MR. RAY: We are, yes.

21 THE COURT: Okay, very well.

22 MR. GOLDIN: Yes, Your Honor.

23 THE COURT: Yes, Mr. Civile.

24 MR. CIVILLE: As a preliminary matter -- I hope
25 this is not going to be a problem -- my client's been --

1 everybody else in this courtroom is cold --

2 THE COURT: Right.

3 MR. CIVILLE: Except he's in a T-shirt.

4 THE COURT: Right.

5 MR. CIVILLE: I've asked -- I've provided a
6 windbreaker. I understand it's being screened. But I just
7 want to inquire, so I don't get -- we're not interrupted
8 during the hearing, if there's gonna be any problem having him
9 wear a windbreaker.

10 THE COURT: No, I don't think so. As long -- has
11 it already been screened? Do we have it?

12 DEPUTY MUNA: It's being screened right now.

13 THE COURT: Oh, okay. Yeah. All right. How
14 long will it -- how long does it take?

15 DEPUTY MUNA: It's being conducted right now,
16 Your Honor. It will come up once it's done.

17 THE COURT: You want to wait until it comes?

18 MR. CIVILLE: No, it's fine. We can proceed,
19 Your Honor. I assume they're going to bring it into the
20 courtroom.

21 DEPUTY MUNA: We'll take care of it.

22 THE COURT: Yeah. No, I know, but the --

23 DEPUTY MUNA: We'll give it to him once it's
24 done.

25 MR. CIVILLE: Well, okay, but we're trying to

1 figure out -- so -- just so long as they do it with some
2 alacrity, Your Honor.

3 (Deputy Muna conferred with the Court.)

4 THE COURT: All right. There -- it should be
5 coming up shortly, Mr. Civile. So if your client gets too
6 cold, then the Court will pause and then we could -- I mean,
7 if you want to wait, we can wait for his --

8 MR. CIVILLE: No, no. We're good. We're good.

9 THE COURT: -- for his windbreaker to come in.
10 But I just understand that the marshals got it a few minutes
11 ago, as well. I mean, if you guys would have brought it
12 earlier, of course we would have had it prepared for him even
13 this morning. But they do have to screen it.

14 MR. CIVILLE: It seems like something one could
15 simply pat down, but --

16 THE COURT: Well, the marshals have to take, you
17 know, extreme caution in all -- and believe me, it's not just
18 Mr. Seleznev. It's all the other defendants that come before
19 my court --

20 MR. CIVILLE: Thank you, Your Honor.

21 THE COURT: -- that we have the security issue
22 with. And it does get cold here.

23 All right. So the Court is in receipt of -- and
24 I haven't had a chance to review the defendant's exhibits, but
25 am I to assume they're the same, they're similar to --

1 MR. CIVILLE: They are, Your Honor. They are
2 documents that we've already filed.

3 THE COURT: And, Ms. David, did you have an
4 opportunity to review those?

5 MS. DAVID: Yes, Your Honor. And I understand
6 Mr. Freedman may have been informed about them, as well.

7 THE COURT: Okay. Mr. Freedman?

8 MR. FREEDMAN: Your Honor, I received the
9 defendant's filings from this morning, which included two
10 declarations, if that's the exhibits we're talking about?

11 MR. CIVILLE: It is, Your Honor.

12 MR. FREEDMAN: And if so, I have reviewed them.

13 THE COURT: Right. That's correct, Mr. Civile?

14 MR. CIVILLE: Yes, Your Honor.

15 THE COURT: Okay. Are we ready to proceed to the
16 removal proceeding, Ms. David?

17 MS. DAVID: Yes, Your Honor. At this time, the
18 government calls Daniel Schwandner.

19 THE COURT: Okay. And just before we begin, I
20 want to be clear: The defendant, Mr. Civile, your client,
21 has full access to his interpreter and there's no issues with
22 -- regarding communication with his interpreter and with you;
23 is that correct?

24 MR. CIVILLE: That's a good question. Let me
25 just confirm that, Your Honor.

1 (Pause.)

2 THE COURT: Agent, you may...

3 (Witness took the stand.)

4 (Pause.)

5 (Mr. Civile and defendant conferred.)

6 MR. CIVILLE: Your Honor, thank you for that
7 inquiry. Unlike the legal arguments this morning, which Ms.
8 Collins translated as best we could as we went along, the
9 testimony that's going to be given now, it's much more
10 important that my client understand it fully, not -- and so
11 I've asked Ms. Collins to be certain to raise her hand or
12 speak up if things are going too fast for her to translate.

13 THE COURT: Okay. That's right. And then I'll
14 just ask the agent to slow down in his responses.

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: All right. Let me just also say,
17 Mr. Civile and the court interpreter, Mr. Seleznev, do you
18 want to use the hearing aid here? Because it is a -- you
19 know, it actually -- the understanding and the -- is a lot
20 clearer, I think. It's not that it's necessarily a lot
21 clearer. I mean a lot louder, I should say, to use this. So
22 you can give this to your client as well as to -- for sure to
23 the interpreter if she needs that. So the Court has passed
24 that on to both of them if they wish to use that.

25 MR. CIVILLE: Thank you, Your Honor. They're --

1 THE COURT: So you want to put it on and see
2 if --

3 MR. CIVILLE: They're examining the devices now.

4 THE COURT: So put it on like this. I don't know
5 if he needs to because -- unless if he can understand a little
6 bit of English.

7 MR. CIVILLE: It's pretty much clear.

8 THE COURT: So I'll go "testing, testing." Can
9 you hear? Testing, testing, test. Okay. You can hear. Is
10 it a lot easier? It's just a lot louder to hear it --
11 clearer, I think, or louder, I should say. Okay. In case any
12 of the interpreter or the defense needs this.

13 Also, for the record, the Court notes that the
14 United States Marshals have completed the screening of the
15 defendant's windbreaker and he now has it. Is the defendant
16 warm enough, Ms. Interpreter?

17 (Pause.)

18 THE COURT: Only she needs to do it if he doesn't
19 understand English.

20 MR. CIVILLE: He can't hear the interpreter as
21 clearly.

22 THE COURT: Okay.

23 MR. CIVILLE: So she'll wear it, and he'll listen
24 to the interpreter.

25 THE COURT: Okay. Very well. And is he warm

1 enough?

2 THE DEFENDANT: Yes. Thank you. (In English.)

3 THE COURT: He's indicating yes?

4 INTERPRETER: Yes. Thank you.

5 THE COURT: Oh. "Yes, thank you." I'm sorry. I
6 didn't hear the last few words.

7 All right. U.S. Attorneys' Office, Ms. David? We
8 have a witness. Let me have him please stand and be sworn in
9 by the clerk.

10 THE CLERK: Please raise your right hand, sir.

11 (DAN SCHWANDNER, government witness, sworn.)

12 THE WITNESS: I do.

13 THE CLERK: Thank you, sir. Please be seated.
14 Please state your full name and spell your last named for the
15 record.

16 THE WITNESS: My name is Dan Schwandner,
17 S-C-H-W-A-N-D-N-E-R.

18 THE CLERK: Thank you, sir.

19

20 DIRECT EXAMINATION

21 BY MS. DAVID:

22 Q. Sir, where do you work?

23 A. Ma'am, I work for the U.S. Secret Service. I am a
24 special agent. I have been so employed since December of
25 1997, and I am currently assigned to our office in Bangkok,

1 Thailand.

2 Q. Agent Schwandner, I want to direct your attention to
3 July 5 of this year, 2014. Did you happen to be in Male
4 Maldives on that date?

5 A. I did, ma'am.

6 Q. Okay. And did you happen to be in the airport in
7 Male on that date?

8 A. Yes, ma'am.

9 Q. Okay. In front of you, sir, is an exhibit binder.
10 If you can take a look at Exhibits 1, 2 and 3 and, for the
11 record, identify each one.

12 A. Yes, ma'am. Exhibit 1 is a warrant for the arrest of
13 Roman Seleznev issued by the United States District Court in
14 the Western District of Washington. Exhibit No. 2 is a grand
15 jury indictment issued by the grand jury for Roman Seleznev.
16 And Exhibit No. 3 is the Red Notice issued by INTERPOL for
17 Defendant Roman Seleznev.

18 Q. And did you have copies of these three exhibits with
19 you on July 5th of 2014?

20 A. I did, ma'am.

21 Q. Okay. And directing your attention to Exhibit 3,
22 which you identified as a Red Notice for a -- a Mr. Seleznev.
23 For the record, can you explain what a Red Notice is?

24 A. Yes, ma'am. A Red Notice is issued by INTERPOL,
25 which is a multi-national police cooperating agency that is

1 designed particularly to induce the cooperation of nations
2 when it comes to conducting investigations. So a Red Notice

3 --

4 INTERPRETER: Excuse me.

5 THE COURT: Slow down?

6 INTERPRETER: A little bit slower, please.

7 THE WITNESS: A Red Notice in particular is
8 issued by INTERPOL to request the assistance of identifying a
9 defendant or a suspect regarding an investigation currently
10 being conducted, or a wanted person.

11 THE COURT: Okay. Hold on a second. We'll wait
12 until she completes. All right. Next question.

13 BY MS. DAVID: (CONTINUING)

14 Q. By INTERPOL, do you also mean like the international
15 police?

16 A. Yes.

17 Q. And is the Maldives also a member of this INTERPOL?

18 A. Yes, ma'am. To my knowledge, there are approximately
19 190 members of INTERPOL, of which the Maldives is a member.

20 Q. What is --

21 THE COURT: Hold on, hold on. Ms. David, maybe
22 you can just turn back and forth while she's explaining.
23 Okay. Go ahead.

24 (Pause.)

25 BY MS. DAVID: (CONTINUING)

1 Q. What was your purpose for going to the Maldives and
2 being at the airport on July 5th of this year with Exhibits 1,
3 2 and 3?

4 A. My purpose of being there was, I was asked on behalf
5 of my headquarters to travel to the Maldives because there was
6 a belief that the defendant, Roman Seleznev, may be located in
7 the Maldives. So my purpose was to work with our diplomatic
8 partners in the U.S. State Department and our partners in law
9 enforcement in the Maldivian authorities -- basically a
10 two-fold purpose:

11 One was to inquire of the Maldivian authorities
12 whether we could get confirmation that Mr. Seleznev was indeed
13 in the Maldives, and two, if the U.S. Secret Service presented
14 the government of the Maldives with the Red Notice request,
15 what our options would be regarding the possible turning over
16 of Mr. Seleznev to U.S. authorities.

17 Q. Okay. Sir, if you could take a look at Exhibit 3,
18 which you identified as the Red Notice. Generally, what
19 information is reflected on that form?

20 A. Well, the Red Notice is always going to have the
21 identifying particulars of the person in question, such as the
22 name, the -- potentially the date of birth if it's known, a
23 photo if it's available, the nationality of the person if it's
24 available, any type of aliases that the person may have if
25 known; also, things such as their occupation, their marital

1 status, languages spoken, any type of identity documents that
2 could be verified, such as passport numbers. And it will also
3 give a description of the offenses that have occurred and the
4 districts that they've occurred and the jurisdictional venue
5 of where the arrest warrant and the indictment was issued.

6 Q. So Exhibits 1, 2 and 3, which you've identified, you
7 had copies of these with you when you were in Male on
8 July 5th; correct?

9 A. Yes, ma'am.

10 Q. And you recognize them to be copies of the warrant of
11 arrest, which is Exhibit 1 --

12 A. Yes, ma'am.

13 Q. -- the superseding indictment, which is Exhibit 2,
14 and the Red Notice which is Exhibit 3; correct?

15 A. Yes, ma'am.

16 MS. DAVID: Your Honor, we move to admit these
17 three exhibits at this time.

18 THE COURT: Defense counsels? Exhibit 3 has
19 already been admitted --

20 MS. DAVID: That's correct, Your Honor.

21 THE COURT: -- in the prior hearing, as I recall.
22 The Exhibit A, pages 1 through 5. Mr. Civile, would you
23 agree with that?

24 MR. CIVILLE: Your Honor, actually, Exhibit 3 was
25 admitted -- was referred to in argument because it was a

1 document that was used, but I don't think it was -- I would
2 distinguish that from being actually admitted into evidence.

3 But --

4 THE COURT: It was identified. You're right. It
5 was marked -- it was marked and identified as an Exhibit A-1
6 through 5.

7 MR. CIVILLE: And, Your Honor, just to clarify,
8 on Exhibit 1, it is -- the second page of that document is not
9 completed. And am I understanding that they're representing
10 -- the government is offering this as the condition of the
11 document when it was taken to the Maldives -- the Maldives?
12 In other words, I've seen a completed version or a partially
13 completed version of the second page, so I'm -- I'm just
14 trying to inquire, is this meant to be the document as of
15 July 5th?

16 THE COURT: As of the date that he had it in his
17 possession?

18 MR. CIVILLE: Yes, Your Honor.

19 THE COURT: Right. You see the second page?

20 THE WITNESS: Yes. Yes, sir. This is the
21 document that was in my possession on July the 5th.

22 THE COURT: So no information provided on that --

23 THE WITNESS: On page 2?

24 THE COURT: Right.

25 THE WITNESS: No, ma'am.

1 THE COURT: That's correct?

2 THE WITNESS: That is correct.

3 MR. CIVILLE: Okay. Thank you, Your Honor. No
4 objection, Your Honor.

5 THE COURT: All right. For -- Exhibits 1, 2 and
6 3 are all admitted without objection.

7 (Exhibits 1, 2 and 3 admitted.)

8 BY MS. DAVID: (CONTINUING)

9 Q. So did there come a time --

10 MR. CIVILLE: I'm sorry, Your Honor. Let me --
11 because the Court has allowed us to preserve our
12 jurisdictional argument --

13 THE COURT: Mm-hmm.

14 MR. CIVILLE: -- um, you know, for identification
15 purposes only, we do not object. We accept that these were
16 the documents that they took, as far as it goes.

17 THE COURT: Okay. For purposes of this removal
18 hearing, then, the Court is admitting these Exhibits 1, 2 and
19 3 without objection.

20 MR. CIVILLE: Thank you.

21 THE COURT: All right. Go ahead.

22 BY MS. DAVID: (CONTINUING)

23 Q. Agent Schwandner, approximately what part of the day
24 on July 5th were you at the Male airport?

25 A. I believe I arrived at the Male airport shortly after

1 9 a.m. on the morning of July 5th.

2 Q. And did -- that morning, did you have an occasion to
3 meet up with an individual later identified to you as a Roman
4 Seleznev?

5 A. I did.

6 Q. Can you explain where that encounter took place?

7 A. Well, the encounter took place in the tourist police
8 station inside the airport in the Maldives. The --

9 INTERPRETER: I'm sorry. Just one second,
10 please.

11 THE COURT: Yes, of course. Yeah. So why don't
12 we do it like this.

13 (Pause.)

14 INTERPRETER: Thank you.

15 THE COURT: So I think what we'll do is -- so
16 I'll ask Agent Schwandner -- so, you know, just break it down,
17 like part of your sentence, a little slower, then just wait,
18 let her interpret, and then come back and continue on. Okay?

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: We can do that. Just -- it'll make
21 it easier, instead of getting the interruptions.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: All right. So you arrived at
24 9:25 a.m.?

25 THE WITNESS: Approximately. It was probably

1 shortly after 9 a.m., Your Honor.

2 THE COURT: Okay. After 9 a.m. Okay. You may
3 proceed.

4 THE WITNESS: So --

5 BY MS. DAVID: (CONTINUING)

6 Q. If you can continue, sir.

7 A. Right. At approximately 10:20 a.m., the Maldivian
8 tourist police brought Mr. Seleznev and his traveling party
9 into the tourist police station, where he was asked by Special
10 Agent in Charge, Iacovetti, if he would please take a seat on
11 the sofa. His traveling party was asked by the Maldivian
12 authorities to go into the back room of the police station.
13 And at this time, the Maldivian authorities confirmed that --
14 their -- their concern in looking at the Red Notice was to
15 ensure the identity of Mr. Seleznev. So at that moment, they
16 told me that they indeed had confirmed, based on the Red
17 Notice, that the defendant's name, his identifying birthmark,
18 his passport number, matched those in the Red Notice, and the
19 Maldivian authorities then told me that they were confident
20 that this was the person that was listed in the Red Notice.

21 So at that moment, with Mr. Seleznev sitting on the
22 sofa, I approached the defendant and I asked the defendant if
23 he was Roman Seleznev, and his response was, "Yes, I am."

24 Q. And at that time, did you have an opportunity to also
25 review, for example, travel documents related to that

1 individual?

2 A. Yes, ma'am, I did. After I introduced myself to the
3 defendant, I told him who I was, who I worked for. I told him
4 the purpose of my being there. I showed him a copy of the
5 indictment and the arrest warrant. And the defendant had a
6 bag that he was carrying on his shoulder that the police
7 authorities then took from him, and then inside that bag were
8 several travel documents relating to the defendant's trip.

9 Q. And when you say "travel documents," generally, what
10 sort of travel documents? You mentioned passport --

11 A. Boarding pass, itineraries, receipts for tickets,
12 names of travelers. I believe his departure card from the
13 Maldives was also there.

14 THE COURT: Slow down a little bit.

15 THE WITNESS: Sorry, Your Honor.

16 THE COURT: Just be a little -- just watch the
17 defendant and the interpreter so she can interpret.

18 Okay.

19 BY MS. DAVID: (CONTINUING)

20 Q. Sir, can you take a look at Exhibit 4-A and identify
21 that for the record?

22 A. Yes, Exhibit 4-A is a copy of the defendant's Russian
23 federation passport that was in his possession when he arrived
24 at the tourist police station in the Maldives.

25 Q. And can you identify for the record the passport

1 number for this document?

2 A. The passport number is 64 November 0410831.

3 Q. So when you reference November, are you -- do you
4 mean the letter N?

5 A. The letter N; yes, ma'am.

6 Q. Where on that document would, for example, the
7 biographical data be located?

8 A. Well, the defendant's biographical data would be
9 listed -- I have to look.

10 THE COURT: I'm sorry. Can you just -- what was
11 the passport number again?

12 THE WITNESS: I'm sorry. I have to look again.

13 The biographical data page lists the defendant's
14 name as Roman Seleznev. Passport No. 64 N0410881. But it's
15 N-O, actually, so I don't know if that's supposed to be
16 number.

17 BY MS. DAVID:

18 Q. Sir, do you mean 0831? As the last three digits?

19 MR. CIVILLE: Your Honor, if I -- I lost -- I
20 missed what page Ms. Marivic is referring to -- Ms. David is
21 referring to. Sorry.

22 THE COURT: Let's see. What page is he -- I
23 think he's Exhibit 4, but what page is he referring to in
24 Exhibit 4? Agent?

25 THE WITNESS: It's 4-A, 21, Your Honor.

1 THE COURT: Oh, 21.

2 THE WITNESS: At the top right-hand corner, the
3 biographical page, the passport number is 640410831.

4 MS. DAVID: Your Honor, that would be the last
5 page.

6 BY MS. DAVID: (CONTINUING)

7 Q. Is that the last page of the exhibit, sir?

8 A. Yes, ma'am.

9 THE COURT: So for the record, 4-A is pages 4-A,
10 1 through 21. Okay.

11 BY MS. DAVID: (CONTINUING)

12 Q. On that last page for the biographical data, you
13 mentioned the name of the passport holder. Is there also a
14 photograph?

15 A. Yes, ma'am, there is a photograph.

16 Q. Okay.

17 INTERPRETER: Excuse me. I did not hear the
18 question.

19 THE COURT: Okay. Repeat the question, please.
20 Go ahead, Veronica. What's the last question?

21 (Ms. David proceeded to repeat question.)

22 BY MS. DAVID: (CONTINUING)

23 Q. Sir, on the biographical data page of that
24 passport --

25 THE COURT: All right. She's going to repeat it.

1 Never mind.

2 BY MS. DAVID: (CONTINUING)

3 Q. -- is there also a photograph?

4 A. Yes, ma'am, affirmative. There is a photograph.

5 Q. And did that photograph match the person who
6 identified himself to you as Roman Seleznev?

7 A. Yes.

8 MR. CIVILLE: Objection, Your Honor. Calls --
9 speculation on the part of this witness. That's really a
10 decision for Your Honor to make.

11 THE COURT: Did he indicate to you that that was
12 his name, Roman Seleznev?

13 THE WITNESS: Yes, Your Honor. That was the
14 first question that I asked him. When he -- when I approached
15 him, I asked him if he was Roman Seleznev, and he responded,
16 "Yes."

17 THE COURT: Okay. All right. Overruled. Go
18 ahead.

19 BY MS. DAVID: (CONTINUING)

20 Q. Sir, you had a chance to peruse through the pages of
21 this passport; correct?

22 A. Yes, ma'am.

23 Q. I want to direct your attention to what is the fourth
24 page of this exhibit.

25 THE COURT: Is that 4-A-4? Is that what you're

1 looking at?

2 MS. DAVID: Yes, Your Honor.

3 THE COURT: Okay.

4 BY MS. DAVID: (CONTINUING)

5 Q. Are you there, sir?

6 A. Yes, ma'am.

7 Q. Okay. On the left page of that passport, do you
8 recognize the information reflected on that page?

9 A. At the top, it looks like an arrival and departure
10 stamp. At the bottom of the page, I recognize the arrival and
11 departure stamp for a visit to Singapore.

12 Q. And what dates are reflected on that stamp?

13 A. It appears that the defendant arrived in Singapore on
14 7 April 2010 and departed on 9 April 2010.

15 Q. Agent Schwandner, you mentioned in addition to this
16 travel document, there were other documents you saw at the
17 airport. Could you take a look, please, at Exhibit 5-A.

18 A. Yes, ma'am.

19 Q. Had you seen -- what is 5-A?

20 A. 5-A is the -- is an additional passport that was in
21 the possession of the defendant. It was located in the travel
22 bag that he was carrying with him.

23 Q. And is there also a photograph page in this exhibit,
24 and can you identify what page for the record?

25 A. Yes, ma'am. It's Exhibit 5-A-3. It shows the

1 photograph of the defendant, Roman Seleznev.

2 Q. What, if any, similarities did you find comparing the
3 Red Notice, which is Exhibit 3, and these travel documents
4 that you just identified, Exhibits 5-A and/or Exhibit 4-A?

5 A. Well, ma'am, the --

6 MR. CIVILLE: Your Honor, if that question is
7 directed at the photograph in Exhibit 5-A-3, then we make the
8 same objection as to the earlier photograph, that the witness
9 isn't -- it's just speculation on his part. It's really an
10 issue for your court -- Your Honor to decide.

11 THE COURT: All right.

12 MS. DAVID: I'm not asking him in particular of
13 the photograph. I'm asking him what, if any, similarities he
14 found with these three exhibits.

15 THE COURT: Okay. Overruled. Go ahead.

16 THE WITNESS: Well, the passport numbers matched
17 the Red Notice to the passport numbers that were in the
18 possession of the defendant at that time.

19 BY MS. DAVID: (CONTINUING)

20 Q. And which passport number are you referring to?

21 A. I'm referring to his international passport, which is
22 Exhibit 4-A.

23 Q. Okay.

24 A. So that would have been the Passport No. 640410831.

25 Q. And where on the Red Notice document is that

1 information reflected?

2 A. Page 32, identity documents, Russian Passport
3 No. 640410831.

4 Q. So in -- you're saying -- are there any other
5 similarities other than the passport number that you just
6 mentioned?

7 A. Well, aside from the photograph, the identifying
8 marks of the defendant's mole underneath his left eye, his
9 name matched, and, obviously, the country of origin.

10 Q. Okay. And when you talked about distinguishing marks
11 or characteristics, where is that reflected on the Red Notice
12 document, sir?

13 INTERPRETER: I'm sorry.

14 THE WITNESS: It's on page 3-2, distinguishing
15 marks and characteristics.

16 THE COURT: I'm sorry. What is it,
17 Ms. Interpreter?

18 INTERPRETER: Could you please repeat the last
19 question?

20 THE COURT: Repeat the last question.

21 BY MS. DAVID: (CONTINUING)

22 Q. With respect to distinguishing marks information that
23 you just referred to, where is that referenced in the Red
24 Notice, sir?

25 A. In the Red Notice, it is on page 3-2, above numeral

1 2, "distinguishing marks and characteristics." It says
2 "Seleznev's height and weight are estimated, and he has a mole
3 below his left eye."

4 Q. Do you see that person here in the courtroom today,
5 sir?

6 A. I do, ma'am.

7 MR. CIVILLE: Objection as to when she says "that
8 person." You mean the person that they arrested in the
9 Maldives?

10 MS. DAVID: Let me rephrase, Your Honor.

11 THE COURT: All right. Very well. Rephrase.

12 BY MS. DAVID: (CONTINUING)

13 Q. Agent Schwandner, the person who you encountered in
14 the Maldives who identified himself to you as Roman Seleznev,
15 do you see him in the courtroom today?

16 A. Yes, ma'am.

17 Q. For the record, can you describe what color of shirt
18 he's wearing? And if you need to stand...

19 THE COURT: You may step down.

20 THE WITNESS: May I step down, Your Honor?

21 THE COURT: You may. You may.

22 (Witness stepped down from stand and walked up to
23 defense table.)

24 THE COURT: Why don't you give him a mic, Carm,
25 just in case there's additional --

1 THE WITNESS: It appears the defendant is wearing
2 a blue shirt and blue jacket.

3 THE COURT: Hold on a second, Agent. Why don't
4 you speak on that mic right next to you right there.

5 THE WITNESS: It appears the defendant is wearing
6 a blue shirt with a blue jacket.

7 BY MS. DAVID: (CONTINUING)

8 Q. And, sir, the person that you just identified, do you
9 see that distinguishing mark you just referenced earlier?

10 A. Yes, ma'am.

11 Q. And what would that be?

12 A. The defendant has a mole below his left eye.

13 Q. If you can go back to the witness stand.

14 A. (Witness complied.)

15 Q. Sir, can you next take a look at Exhibit 6 for the
16 record? And have you seen that before?

17 A. Yes, ma'am.

18 Q. Can you explain what it is and where you saw it
19 before?

20 A. It is a departure card. So that's a two-part -- when
21 you arrive in a country, some countries have arrival and
22 departure cards. So they collect the arrival card at the time
23 you arrive, and you hold onto the departure card and then it's
24 taken from you as you pass through Immigration when you're
25 clearing Immigration as you're departing the country. So in

1 this instance, it's a departure card from the country of the
2 Maldives.

3 Q. And is there any stamp reflected on this exhibit?

4 A. Yes, ma'am.

5 Q. And what is it -- what information is --

6 A. The stamp is Maldivian immigration stamp of 21 June
7 2014, which indicates the day of arrival.

8 Q. And where did you --

9 MR. CIVILLE: Wait. I'm sorry. Your Honor, I
10 object to that, too. The witness has testified it's a
11 departure stamp, a departure card, and now he's testifying
12 that the June 21 stamp is actually an arrival date. And I
13 don't think the witness has been shown to have any -- the
14 foundation for making that jump.

15 THE COURT: Okay. So the objection is lack of
16 foundation?

17 MR. CIVILLE: Yes, Your Honor.

18 THE COURT: Sustained. You want to build a
19 foundation?

20 BY MS. DAVID: (CONTINUING)

21 Q. Sir, you indicated that you are currently stationed
22 in the Bangkok resident office --

23 A. Yes, ma'am.

24 Q. -- correct?

25 So part of your duties -- does it include a lot of

1 travel?

2 A. Yes, ma'am.

3 Q. Like how many ports -- international airports, for
4 example, have -- approximately, have you visited while you
5 were in that region?

6 A. I have visited probably approximately ten
7 international airports in the Asia-Pacific region in the past
8 two years.

9 Q. And have you yourself, for example, had to fill out
10 arrival/departure cards of countries and airports you visited?

11 A. Yes, ma'am. And I filled this card out myself when I
12 arrived in the Maldives on July the 3rd. That's how I knew
13 that that was the date of arrival, because they stamped "3
14 July" on my card.

15 Q. So Exhibit No. 6 -- when you reference June 21, 2014,
16 as a stamp of arrival date, that's consistent with your
17 experience traveling to the Maldives yourself; correct?

18 A. Yes, ma'am. It's also consistent with the
19 information that was provided to us by the Maldivian
20 authorities.

21 Q. And where did you see a copy of Exhibit 6?

22 A. I believe it was with his passport.

23 Q. And when you say "passport," are you referring to the
24 passport listed as 4-A?

25 A. Yes, ma'am.

1 Q. You mentioned earlier that you also saw
2 travel-related documents in connection with Mr. Seleznev. Can
3 you take a look at Exhibit 7-A?

4 A. Yes, ma'am.

5 Q. Have you seen this exhibit before?

6 A. Yes, ma'am.

7 Q. And where?

8 A. These are the documents that were found in the travel
9 bag that was contained -- that the defendant had on his
10 shoulder. Inside the bag where these itineraries, receipts,
11 boarding passes.

12 Q. And when you talk about itinerary, are you referring,
13 sir, to Exhibit 7?

14 A. Exhibit 7; yes, ma'am.

15 Q. 7-A?

16 A. Yes, ma'am.

17 Q. And when you're referencing a boarding pass, are you
18 referring to Exhibit 8?

19 A. Yes, ma'am.

20 MR. CIVILLE: Your Honor, if I may interject at
21 this point. We'd like to preserve an objection. My
22 understanding of the case law, Your Honor, is that as a
23 removal proceeding, although it was appropriate for us to
24 raise the issue of jurisdiction, it would not be appropriate
25 for us to raise a substantive challenge such as a motion to

1 suppress. So we would ask the Court to note simply an ongoing
2 objection to any -- the admission of any evidence or the
3 testimony of any documents that were taken from our client in
4 the Maldives because we believe those are properly subject
5 later on to a motion to suppress.

6 THE COURT: All right. So you want to preserve
7 your --

8 MR. CIVILLE: Yes, Your Honor.

9 THE COURT: -- right to have a motion to suppress
10 heard before the indicting court?

11 MR. CIVILLE: That's right.

12 THE COURT: So noted.

13 MR. CIVILLE: And I won't keep making the same
14 objection, but I'd like to -- I'd ask the Court for a
15 continuing objection.

16 THE COURT: All right. The Court will accept
17 that as a continuing objection, anything related to --
18 specifically --

19 MR. CIVILLE: Any evidence or, actually, any
20 statements by our client.

21 THE COURT: All right. Very well.

22 MR. CIVILLE: Thank you.

23 THE COURT: The Court will preserve that
24 objection for you.

25 You may proceed.

1 MS. DAVID: Your Honor, the government at this
2 time, noting counsel's objection, moves to admit Exhibit 4-A,
3 which is the passport identified with the last three digit
4 number 831.

5 THE COURT: Okay. Let me just make sure, before
6 we do that -- before you go into the other exhibits, I just
7 want to make sure we're on record in terms of the number of
8 pages. With regard to Exhibit 1 that has already been
9 previously admitted, there's only two pages; is that correct?

10 MS. DAVID: That is correct, Your Honor.

11 THE COURT: And then Exhibit 3 is the superseding
12 indictment that has been sealed and -- that has not been
13 unsealed, has it? I see "sealed" there.

14 MS. DAVID: No, it has been unsealed, Your Honor.

15 THE COURT: It has been unsealed? So that is
16 pages 1 through 27; correct?

17 MS. DAVID: Actually, for the record, Your Honor,
18 Exhibit 1 is the two-page arrest warrant. Exhibit 2 --
19 correct, Your Honor -- is the 27-page indictment.

20 THE COURT: Okay. And then Exhibit 3 is marked
21 as 3 and then all the way up to 3-5. So there's five pages,
22 right?

23 MS. DAVID: That is correct, Your Honor.

24 THE COURT: All right. Then Exhibit 4, you're
25 moving to admit -- moving for admission of Exhibit 4, which is

1 the passport, and that has four -- just for -- 4-A to 4-A-21?

2 MS. DAVID: That is correct, Your Honor.

3 THE COURT: Okay. What else?

4 MS. DAVID: Also, I move to admit Exhibit 5-A.

5 That also has multiple pages.

6 THE COURT: Okay. So for the record, that's 5-A
7 through -- is it 5-12?

8 MS. DAVID: That's correct, Your Honor.

9 THE COURT: So 5-A through 5-12, okay.

10 MS. DAVID: The Maldives department -- departure
11 card identified as Exhibit 6.

12 THE COURT: Which has one page. Okay.

13 MS. DAVID: The itinerary identified as
14 Exhibit 7-A.

15 THE COURT: Consisting of three pages -- two
16 pages.

17 MS. DAVID: Two pages, Your Honor.

18 And the boarding pass identified as Exhibit 8.

19 THE COURT: All right. Okay, Counsels. Just --
20 you just want to preserve your objections?

21 MR. CIVILLE: Yes, Your Honor.

22 THE COURT: All right. Very well. For purposes
23 of the suppression.

24 All right. So the Court will admit Exhibit 4 in
25 its entirety, from 4-A to 4-21. The Court will also admit 5-A

1 to 5-12. The Court also admits, for the record, Exhibit 6,
2 which is -- consists of one page; Exhibit 7, from 7-A to
3 7-A-2. So there's two pages there. And then, also, Exhibit 8
4 is admitted. And the Court notes the objection already raised
5 by defense counsel.

6 (Exhibits 4, 5, 6, 7 and 8 admitted.)

7 THE COURT: Okay.

8 BY MS. DAVID: (CONTINUING)

9 Q. Agent Schwandner, if you can compare Exhibit 7-A and
10 Exhibit 8, can you tell what airline information is reflected
11 on both these exhibits?

12 A. On Exhibit 7-A, it looks like a receipt from
13 Transaero Airlines, and Exhibit 8 is a boarding pass from
14 Transaero Airlines for Mr. Roman Seleznev from Moscow to Male.

15 Q. Okay. Showing an arrival date of what?

16 A. 21 June.

17 MS. DAVID: May I have a moment, Your Honor?

18 THE COURT: You may.

19 (Pause.)

20 MS. DAVID: Your Honor, may I inquire if my
21 colleague, Mr. Freedman, has any questions at this time for
22 the agent?

23 THE COURT: Mr. Freedman, yes.

24 MR. FREEDMAN: I do not. Thank you.

25 THE COURT: No questions.

1 MS. DAVID: Um, I have no questions at this time,
2 Your Honor, for Agent Schwandner.

3 THE COURT: Okay. Mr. Civile, any questions?

4 MR. CIVILLE: Yes, Your Honor.

5 THE COURT: Okay. You may proceed.

6
7 CROSS-EXAMINATION

8 BY MR. CIVILLE:

9 Q. Agent Schwandner, I'm Patrick Civile. I'm counsel
10 for Mr. Seleznev.

11 Turning to Exhibit 2, the superseding indictment,
12 apparently issued on March 16, 2011. Let me ask you, sir,
13 were you involved in any way in the presentment of evidence --
14 in presenting evidence to that grand jury that returned that
15 indictment?

16 A. I was not, sir.

17 Q. Okay. Were you involved in the investigation that
18 led up to the issuing of that superseding indictment?

19 A. I was not, sir.

20 Q. Okay. Listening to your testimony, I had the
21 impression that your first involvement in anything involving a
22 person named Roman Seleznev was shortly before you went to the
23 Maldives in July of this year; is that correct?

24 A. I initially became aware of the defendant in 2012,
25 also, while I was working in the Bangkok office.

1 Q. Okay. And when you say "became aware of," knew that
2 there was a warrant out for somebody named Roman Seleznev?

3 A. Yes, sir.

4 Q. Were you -- did -- were you -- other than knowing --
5 having that general information, were you involved at all in
6 2012 in the investigation into Roman --

7 A. As far as the facts of the indictment, sir?

8 Q. Yes.

9 A. No, sir.

10 Q. Okay. Or into the -- any efforts to pursue Roman
11 Seleznev?

12 A. In December of 2012, yes, sir.

13 Q. Okay. And what was your involvement then?

14 A. I was in Bali, Indonesia.

15 Q. And what was the nature of your involvement in Bali
16 -- and that was in December 2012? I'm sorry.

17 MS. DAVID: Your Honor, the government objects.
18 The purpose of this hearing is strictly identity as to the
19 individual the agent encountered at the Maldives airport.

20 THE COURT: Okay. Mr. Civile?

21 MR. CIVILLE: Well, actually, that's not at all
22 correct, Your Honor. The issue is, is the Roman Selez- --
23 Valerievich Seleznev who is here in the courtroom, is that the
24 person named in the superseding indictment. So far, we
25 haven't heard any testimony on that, nothing to link --

1 they've arrested a person named Roman Seleznev, and now
2 they're asking you to believe that that's the Roman Seleznev
3 named in the superseding indictment. This witness so far
4 hasn't given us any link to that.

5 MS. DAVID: And the government does intend to
6 call another witness for that purpose.

7 MR. CIVILLE: And that's fine. I anticipate,
8 though, they're going to call somebody else, but they've
9 chosen to put this witness on the stand, and I think he's fair
10 for cross-examination.

11 THE COURT: Okay. Overruled. Go ahead.

12 MR. CIVILLE: Thank you, Your Honor.

13 BY MR. CIVILLE: (CONTINUING)

14 Q. In Bali, sir, was that December 2012?

15 A. December of 2012; yes, sir.

16 Q. Okay. And what was your -- give me a brief rundown
17 of what happened in Bali.

18 A. It was just -- again, there -- we believed that the
19 defendant was possibly traveling in Bali at that time. We
20 were unsure. We, being the Secret Service, were unsure if
21 that was the case or not, and we were just making some initial
22 inquiries with the Indonesian government to potentially see.
23 So I became aware of the actual indictment and the arrest
24 warrant at that time.

25 Q. Okay. And did anything come of your trip to Bali?

1 A. No, sir.

2 Q. It didn't produce any useable information for your
3 investigation?

4 A. No, sir.

5 Q. All right. Then you mentioned that -- and I was a
6 little unclear of this -- um -- okay, you got a call from
7 headquarters in Bangkok or wherever your headquarters is -- is
8 that --

9 A. Washington.

10 Q. Washington, all right. To head down to the Maldives.
11 I thought you said you arrived a little after 9 a.m. on
12 July 5th, but perhaps what you said was you arrived at the
13 airport. You had actually arrived in the Maldives earlier
14 than that; is that correct?

15 A. I did, sir.

16 Q. Okay. And I believe you said you arrived on
17 July 3rd.

18 A. 3 July; yes, sir.

19 Q. Were you part of a contingency of Secret Service
20 agents or did you arrive alone?

21 A. No, sir. At that time, I was the only Secret Service
22 agent in the Maldives.

23 Q. And when you got there, were there other agents
24 already in place?

25 A. Not at that time, sir.

1 Q. Other agents did join you?

2 A. The next day, sir.

3 Q. And how many?

4 A. One, the special agent in charge from our Honolulu
5 field office.

6 Q. And who is that, sir?

7 A. Mr. Dave Iacovetti.

8 Q. Okay. And who else?

9 A. And Special Agent Mark Smith, the assistant regional
10 security officer from the U.S. Embassy in Columbo, Sri Lanka.

11 Q. These are all Secret Service agents?

12 A. No, sir. Special Agent Iacovetti is Secret
13 Service -- Special Agent in Charge Iacovetti is Secret
14 Service. I work for the Secret Service. ARSO Smith works for
15 the Diplomatic Security Service, State Department.

16 Q. So that would be -- do I have that correct, there
17 were three of you then?

18 A. Yes, sir.

19 Q. Okay. Was that the entire contingent, or were you
20 joined by anybody else by July 5th?

21 A. That was it, sir.

22 Q. All right. And when -- on the 3rd, did you receive
23 additional information or -- than what you -- let me back up.

24 What information did you have besides -- when you
25 arrived in the Maldives besides the superseding indictment and

1 the -- if you had it at the time, the warrant?

2 A. That's all the information that I had.

3 Q. Just those two documents?

4 A. Those two documents, yes.

5 Q. And then after the -- Agent Iacovetti, who's in
6 charge of the --

7 A. He's the special agent in charge of the Honolulu
8 field office, so he supervises the entire Asia-Pacific region
9 for the Secret Service.

10 Q. So this was pretty much his show?

11 A. (No response.)

12 Q. He was in charge of this detail then?

13 A. He was the supervisor on the ground.

14 Q. Okay. All right. And when he arrived, did you
15 receive additional information?

16 A. No, sir. Not at that time.

17 Q. All right. Did you have contact with the Maldivian
18 authorities when you arrived on July 3rd?

19 A. I did not.

20 Q. After -- how about on July 4th?

21 A. July 4th, yes, sir.

22 Q. Okay. What contact did you have with the Maldivian
23 authorities on July 4th?

24 A. We met with the Maldivian authorities on July 4th.
25 Again, as I told the assistant U.S. attorney, our purpose in

1 the Maldives was simply to ascertain information. We believed
2 that the defendant was possibly in the Maldives. We were
3 asking the Maldivian authorities to assist us in determining
4 whether Roman Seleznev was indeed in the Maldives; and, two,
5 if we provided the Maldivian authorities with a INTERPOL Red
6 Notice, would they consider action on their part or what
7 options would they consider then to potentially turn the
8 defendant over to U.S. authorities.

9 Q. All right. And which authority -- the Maldivian
10 authorities you're talking about, which -- who are they?

11 A. These are police authorities that we met with on the
12 4th of July.

13 Q. I didn't hear that. The --

14 A. Police authorities.

15 Q. -- police -- thank you.

16 Is that like a -- do you know, is it a national
17 police? You mentioned the airport police. What level police
18 authority was this?

19 A. I believe they -- I wouldn't say for certain, sir,
20 but I believe they were the Maldivian national police force.

21 Q. You said that you had reason to believe --

22 INTERPRETER: Excuse me.

23 MR. CIVILLE: I'm sorry.

24 INTERPRETER: Uh -- the defendant...

25 (Mr. Civile consulted with interpreter.)

1 MR. CIVILLE: I'm sorry, Your Honor. The -- Your
2 Honor, in a few minutes, I'm going to ask -- I always have
3 translators say this, "I'm fine. I'm fine." But, actually,
4 translating is really exhausting --

5 THE COURT: Sure.

6 MR. CIVILLE: -- and it leads to a lot of errors.
7 And I'd ask the Court in a few minutes if we could take just a
8 ten-minute break for the translator.

9 THE COURT: Sure. Okay.

10 MR. CIVILLE: Thank you.

11 BY MR. CIVILLE: (CONTINUING)

12 Q. Okay. Going back to the -- I'm sorry. I think your
13 last answer was, not to hold you to it, but you thought it was
14 some kind of national police force?

15 A. Yes, sir.

16 Q. And was this in a -- just for -- so it wasn't at the
17 airport? It was somewhere downtown?

18 A. It was in Male.

19 Q. You mentioned that you went there just on -- the
20 information you had is you thought that a person named
21 Seleznev was going to be there in the Maldives. Is that
22 right?

23 A. Well, I mean, I had the previous information that I
24 knew of the indictment and the arrest warrant.

25 Q. Okay.

1 A. So I was familiar with the case. So the knowledge
2 that I went there with was, yes, there was the potential that
3 Roman Seleznev was present in the Maldives, but I did not have
4 any confirmation at the time that I met with the police on
5 July 4th.

6 Q. And what was the source of the information that you
7 -- that --

8 A. I received the information from my headquarters, sir.
9 I do not know where they received the information from.

10 Q. Very good. Thank you.

11 So you went and had the meeting with the Maldivian
12 police, possibly the national police. How did they respond to
13 your inquiry?

14 A. Well, on the first part of the inquiry is what we
15 were looking -- seeking confirmation that Roman Seleznev was
16 in the Maldives. The police confirmed through immigration
17 records that a Roman Seleznev matching the passport number was
18 present in the Maldives and did arrive on the 21st, I believe
19 it was, of July.

20 Q. And as to the second part of your inquiry?

21 A. We'd asked, of course -- my second part of my inquiry
22 was, if we were able to present the authorities with a Red
23 Notice, would any action be considered or any potential action
24 be considered on the part of the Maldivian authorities to turn
25 the defendant over to U.S. authorities, and we did not receive

1 any answer on that day. We were not given any specific
2 information by the Maldivian authorities as to whether they
3 would or would not at that time.

4 Q. Did they indicate to you that they would have to seek
5 authority from a Maldivian court?

6 A. They did not.

7 Q. Do you know as to -- did you receive -- subsequently
8 receive information that they had sought authority from a
9 Maldivian court?

10 A. No, sir.

11 Q. Okay. All right. What was your next step, then?
12 You had this meeting that was, I gather, inconclusive as least
13 as to the question of --

14 A. Well, like I said, it was --

15 Q. -- would they honor a Red Notice.

16 A. Correct. So the next step was -- I believe it was
17 late -- late in the evening on July 4th in Male. They
18 indicated that the -- the police asked us if we would present
19 or give them a copy of the Red Notice. That was their
20 request.

21 Q. Now, at that time, am I correct, you did not have a
22 Red Notice yet?

23 A. The Red Notice was ready to go. The Secret Service
24 was prepared to send out the Red Notice through INTERPOL,
25 through our INTERPOL liaison. So we were prepared to do that,

1 but we as of yet had not released the Red Notice.

2 Q. The Red Notice, for those of us who don't deal with
3 these things, it is -- and that's Exhibit 3. It bears at the
4 top right-hand corner a stamp that appears to be a red stamp,
5 hence the term, perhaps. But it appears to be the stamp of
6 INTERPOL?

7 A. Yes, sir.

8 Q. Okay. But the notice itself is -- do I understand
9 that was prepared by the Secret Service?

10 A. The Secret Service has a liaison officer assigned to
11 INTERPOL in Lyon, France. They also have a liaison officer in
12 Washington, D.C., as I believe most federal law enforcement
13 agencies do.

14 Q. All right. And --

15 A. So I wouldn't be -- as far as the source of the
16 notice, the source of the notice is actually from INTERPOL.
17 INTERPOL sends out the notice.

18 Q. All right. But the information in the Red Notice,
19 that's strictly provided by, in this case, the United States?

20 A. Yes.

21 Q. I think what I was trying to confirm is that there's
22 no independent verification of this information by INTERPOL as
23 a separate entity. This is information that -- the United
24 States sends this information, prepares the Red Notice or
25 prepares the information, and then INTERPOL issues it; is that

1 right?

2 A. To my knowledge, yes, sir.

3 Q. Okay. The date on the INTERPOL notice at the top --
4 and that's on first page of Exhibit 3 -- is July 5th. And
5 would I be correct in saying that's the day you received it?

6 A. Yes. The actual Red Notice was released at 10 p.m.,
7 Eastern Standard Time, Washington time, on July 4th, but that
8 would have been early morning hours in Lyon, so that's why
9 it's 5 July. It was actually issued at 7 a.m., local time, in
10 the Maldives on July 5th.

11 Q. That's what's confusing me. When you say -- if it's
12 issued by INTERPOL --

13 A. The Secret Service, through our liaison to
14 INTERPOL -- this is the way my understanding is. The Secret
15 Service, through our liaison to INTERPOL, was asked to release
16 the Red Notice at 10 p.m., Eastern Time, Washington time, on
17 the 4th of July. When it was released, that would have been
18 early morning, probably 3 a.m. in Lyon, France, which is where
19 INTERPOL headquarters are, and it was 7 a.m. on Saturday,
20 July 5th in the Maldives.

21 Q. Did you have any input into the contents of the Red
22 Notice?

23 A. I did not.

24 Q. Turning to Exhibit 6; this is the departure stamp
25 from the Maldives?

1 A. Departure card.

2 Q. I'm sorry. You got me. Departure card.

3 A. Yes, sir.

4 Q. And your testimony, if I understood it, is that the
5 June 21st stamp on the departure card is an arrival date.

6 A. Yes, sir. That's to my -- best of my knowledge.
7 They also stamped my card when I arrived.

8 Q. All right. And -- I'm sorry. When you left, they
9 stamped your card again?

10 A. When they left, I don't know if they stamped my card.
11 They took the card, and that was it.

12 Q. Okay. All right. And there's no departure stamp
13 that you're aware of on this card?

14 A. I do not see that.

15 Q. Okay. Was this card in Mr. Seleznev's possession
16 when you arrested him?

17 A. I did not arrest him in the Maldives. I did not
18 arrest him in the Maldives, sir.

19 Q. What is it that you think you did to him?

20 A. I arrested him when he landed in Guam.

21 Q. All right. Well, let's walk through that for a
22 moment. So your testimony is that he was escorted or shown
23 into the tourist police station room?

24 A. That is correct.

25 Q. Okay. And there, he was met by the three members of

1 your team?

2 A. That is correct.

3 Q. Okay. And you asked him if his name was Roman
4 Seleznev?

5 A. I did ask him that. Yes, sir.

6 Q. And at that point, that was -- you didn't -- did you
7 show him any documents at that point or did you simply ask
8 him --

9 A. Well, my first question was, what is his name.

10 Q. Pardon me?

11 A. My first question was, "Are you Roman Seleznev?"

12 Q. All right. And from that moment, was Mr. Seleznev
13 ever out of your custody before he arrived on Guam?

14 A. At that moment, Mr. Seleznev was not technically in
15 my custody. He was still in the custody of the Maldivian
16 authorities at that time.

17 Q. Well, had he been arrested by the Maldivian
18 authorities?

19 A. I don't know if I could clarify or speak for the
20 Maldivian authorities as to what his status was, sir. All I
21 can tell you is what the Maldivian authorities told me.

22 Q. What did they tell you?

23 A. They told me or informed me on the morning of
24 Saturday, July 5th, that they were comfortable with detaining
25 Mr. Seleznev based on the INTERPOL Red Notice as long as they

1 could verify to their satisfaction that the information
2 contained on the Red Notice matched that of the defendant.

3 Q. Did you see any documentation that they had -- the
4 Maldivian police had detained him?

5 A. I also -- just if -- if I also may add further that
6 they told me on the morning of the 5th that the decision to
7 undertake this procedure was made at the highest levels of the
8 Maldivian government. But I was not privy to any internal
9 discussions as to who was involved. I do know the president
10 of the Maldives issued a statement following this operation
11 where he very clearly stated that the -- that the defendant
12 was not arrested or no foreign agents arrested the defendant
13 on Maldivian soil, that this was a -- a operation conducted by
14 Maldivian law enforcement and under the control of Maldivian
15 law enforcement.

16 Q. Do you know how Mr. Seleznev arrived at the airport?

17 A. It is my understanding that he arrived via bus. I
18 was in the tourist police station, so I can't confirm.

19 Q. Was one of the members of your squad out there
20 looking to see when he arrived?

21 A. At the?

22 Q. At the airport.

23 A. I believe the Maldivian police invited Special Agent
24 in Charge Iacovetti to ride on the bus with them from the
25 seaplane to the airport. So one of our agents was actually on

1 the bus with Mr. Seleznev when he arrived at the airport.

2 Q. Okay. But -- and it is your understanding that
3 Mr. Seleznev did not know that he was under detention at that
4 point? He was on the bus voluntarily, in other words?

5 A. Yes. As far as I know, yes, sir.

6 Q. Okay. As far as you know, he was just checking in to
7 go back home?

8 A. My understanding from what my counterparts told me is
9 that when Mr. Seleznev approached the departure hall to enter
10 the departure hall, he was then approached by the tourist
11 police at the airport, where he was asked to present his
12 documentation. And at that point, they looked at his
13 documentation to his passport, and my only -- and this is,
14 again, my belief, that they were confirming his identity from
15 his passport -- his name, his passport number, his photo, and
16 such -- because they wanted to ensure that those matched the
17 information that was provided on the INTERPOL Red Notice. And
18 when they were comfortable with that, they brought Mr.
19 Seleznev and his party to the tourist police station.

20 Q. Okay. And when he was taken into the tourist -- into
21 that room you described in the tourist police station, he was
22 handcuffed by you or one of the members of the --

23 A. Negative. Not that moment, sir. At that time, he
24 was asked to sit on the couch.

25 Q. And at some point while he was in that room, was he

1 handcuffed?

2 A. He was handcuffed prior to leaving that room to go to
3 the departure hall.

4 Q. All right. And he went to the departure hall -- and
5 whose handcuffs was he wearing, yours?

6 A. They were mine, sir.

7 Q. Okay.

8 A. Again --

9 Q. And at that point, you don't think he's under arrest?

10 A. At that point, he was turned over to the custody of
11 the United States, as instructed by the Maldivian authorities.
12 This was a very coordinated effort on the part of the
13 Maldivian authorities, sir. They were in control of the
14 operation. At no time did I do anything on my own without
15 their consent or authorization.

16 We were told by the Maldivian authorities that at the
17 time of the escort, there would be two Maldivian police in
18 front, two tourist police in back, and that myself and Special
19 Agent Smith would actually escort the defendant to the
20 departure hall for departure processing.

21 It was at this point that I asked the Maldivian
22 police if I could handcuff the defendant because I was not
23 going to transport the defendant at their request, because of
24 officer safety, without a pair of handcuffs on. So I asked
25 and was granted permission to handcuff the defendant in front,

1 with his hands in front, for the short walk from the airport
2 tourist police station to the departure hall.

3 Q. Okay. So he's in your custody at that point, right?
4 You've handcuffed him?

5 A. That is the beginning of the point where he is being
6 turned over from the Maldivian authorities to the U.S.

7 Q. And he was still on -- and geographically, he was --

8 A. But he's not technically under arrest. He's not
9 under arrest by the U.S. authorities at that time, though. I
10 have no authority in the Maldives.

11 Q. So he could have walked away?

12 A. The Maldivian authorities, I don't believe, would
13 have allowed him to do that. But, again, that was their
14 decision.

15 Q. But from you, he could have walked away?

16 A. Excuse me?

17 Q. From you. You're saying from you, he could have
18 walked away?

19 A. He could have walked away from me if he chose to. I
20 don't believe the Maldivian authorities would have allowed
21 that --

22 Q. Would you have unlocked the handcuffs --

23 COURT REPORTER: One at a time.

24 THE COURT: Okay. One at a time.

25 BY MR. CIVILLE: (CONTINUING)

1 Q. Would you have unlocked the handcuffs and said,
2 "Okay"?

3 A. Sir, the handcuffs were in front. He wasn't detained
4 in any way. He could walk freely.

5 Q. And at what point do you believe that the Maldivian
6 authorities relinquished control over him to you?

7 A. Relinquished control completely? When the plane went
8 wheels up from Maldivian soil. That's the actual point of
9 transfer.

10 Q. Did he have a choice about entering the airplane, your
11 airplane?

12 A. No, he did not have a choice, sir. Again, Maldivian
13 authorities were dictating the circumstances of this -- of
14 this entire operation.

15 Q. Okay. Is there anything in writing to this effect?

16 A. No, sir. Again, I was not privy to any of their
17 discussions. I was just told what was going to happen.

18 Q. Oh, so you don't even know if this is really what the
19 Maldivian authorities said?

20 A. All I have to say, sir, is what they told me.

21 Q. Who --

22 A. They told me. The Maldivian police.

23 (Pause.)

24 Q. And, I'm sorry, the aircraft was a United States
25 chartered aircraft?

1 A. I believe the aircraft was chartered by the U.S. Secret
2 Service. Yes, sir.

3 Q. And you're not suggesting that my client voluntarily
4 boarded that aircraft, are you?

5 A. I'm saying that the Maldivian authorities --

6 Q. That's not my question. I think you understand my
7 question, sir.

8 A. Do I think your client voluntarily boarded the
9 aircraft?

10 Q. Yes.

11 A. No.

12 THE COURT: Sorry. The answer is?

13 THE WITNESS: No, ma'am. No, Your Honor.

14 MR. CIVILLE: Thank you. If I could have one
15 moment, Your Honor.

16 Your Honor, would now be a convenient time to let the
17 interpreter take a few minutes?

18 THE COURT: Oh, sure. Okay. We'll take a
19 ten-minute recess. Do you have any further questions of this
20 witness?

21 MR. CIVILLE: I do, Your Honor.

22 THE COURT: Oh, you do. All right. Ten-minute
23 recess.

24 (Recess taken at 3:24 p.m.)

25 (Back on the record at 3:47 p.m.)

1 THE COURT: Please be seated. All counsels are
2 present. The defendant's present with the court interpreter.
3 You may proceed, Mr. Civile. And the agent is still on the
4 stand.

5 THE WITNESS: Thank you, Your Honor.

6 MR. CIVILLE: Thank you, Your Honor.

7 THE COURT: All right.

8 (Pause.)

9 BY MR. CIVILLE: (CONTINUING)

10 Q. Agent Schwandner, thank you. I'll try not to keep
11 you too much longer. Going to Exhibit 4-A-21.

12 A. Yes, sir.

13 Q. You recognize the -- there is -- next to the
14 photograph, there's printing both in English and in Cyrillic
15 characters, yes?

16 A. Yes, sir.

17 Q. Next to the word "Roman" -- "Roman," actually -- is a
18 Cyrillic word which is not translated. Were you aware that
19 that was his patronymic name?

20 A. I was not.

21 THE COURT: I'm sorry. His what kind of name?

22 MR. CIVILLE: We would call it -- it's similar to
23 -- it's akin to a middle name, Your Honor.

24 THE COURT: Okay.

25 MR. CIVILLE: Although it has a different

1 distinction in Russian. We would represent that -- and we'll
2 see if the government agrees -- that that word next to the
3 name -- and we can actually have the translator, if we have
4 to, testify on this limited issue, that that name is
5 Valerievich.

6 COURT REPORTER: Can you spell that, please.

7 THE COURT: Spell.

8 MR. CIVILLE: I believe it's

9 V-A-L-E-R-I-E-V-I-C-H. Valerievich.

10 BY MR. CIVILLE: (CONTINUING)

11 Q. Going back, then, to Exhibit 1, the warrant for
12 arrest. And, actually, start on Exhibit 2. You, on -- in
13 questioning by Ms. David, you pointed out some identifying
14 characteristics that you relied on in the Maldives. You
15 mentioned the photograph and the mole on the face. Do any of
16 these identifying characteristics appear in the superseding
17 indictment, to your knowledge?

18 A. To my knowledge, I do not know, sir.

19 Q. Pardon?

20 A. I do not know, sir.

21 Q. Okay. And the warrant for arrest, it does not have
22 any of those identifying characteristics?

23 A. No, sir.

24 Q. When you asked Mr. Seleznev in the Maldives in that
25 room in the airport if he was Roman Seleznev, you did not

1 first show him the indictment and ask him, "Now, are you this
2 Roman Seleznev?"

3 A. I did not show him the indictment or the warrant
4 until afterwards, sir.

5 Q. Thank you.

6 Do you know where the identifying characteristics in
7 the Red Notice came from?

8 A. I do not at this time, sir.

9 Q. And I'm gathering that since you were not involved in
10 the investigation back in 2011, you would not know whether the
11 information in the Red Notice was part of the grand jury
12 proceedings.

13 A. I would not know, sir.

14 Q. Do you know if the photo in the Red Notice -- do you
15 know, did that come from the PISCES system?

16 A. I do not know that either, sir.

17 Q. Was that PISCES system information available in the
18 Maldives?

19 A. I do not know the answer to that, sir.

20 Q. Was there a Red Notice issued in December 2012 when
21 you went to Bali?

22 A. Not to my knowledge.

23 Q. And I think I asked you this, but I just want to back
24 up for one moment and clarify. When you -- you mentioned you
25 spoke to the authorities, the national -- possibly the

1 national police; do you know if an application for a warrant
2 was made in the Maldives?

3 A. You mean by the Maldivian authorities?

4 Q. Yes.

5 A. I do not know. They did not provide me with any
6 information.

7 Q. As you were -- once you were all present in that room
8 at the airport, did the Maldivian authorities say anything to
9 you from that point on? Did you have a discussion with them?

10 A. No, sir. You mean when -- in what room?

11 Q. In the airport?

12 A. At the tourist police station?

13 Q. At the tourist police station, once Mr. Seleznev
14 arrived at the airport, did you have any further discussion
15 with the Maldivian authorities?

16 A. Yes. Yes. They -- the discussion was to confirm --
17 again, their concern was that they wanted to match for sure
18 the person listed in the Red Notice with the person that was
19 present in the room. So my discussion with them at the time
20 was examining the defendant's passport and the Red Notice, and
21 from what they observed, they matched the passport numbers to
22 the names, to the identifying marks, to the date of birth.
23 Then they were convinced that it was the same person. And
24 then the next discussion we had with them was when they were
25 ready to move the defendant to the -- to the VIP hall for

1 immigration processing. Actually, all of us were going to the
2 VIP hall for immigration processing.

3 Q. Okay. So Mr. Seleznev had not been through
4 processing yet when he was brought into the police room?

5 A. He had not gone through immigration at that time, no.

6 Q. And the departure card that I think was in Exhibit 6
7 that there's been testimony about, that was in Mr. Seleznev's
8 possession when he left the Maldives?

9 A. It was. I believe in normal procedures, they would
10 normally take the card. They did not. In my experience, they
11 normally do.

12 Q. Who did you -- who was -- do you recall, who was your
13 point of contact?

14 A. I'm sorry, sir; I don't know his name. There was
15 more than one.

16 Q. On the Maldivian side?

17 A. Yes, sir.

18 Q. Just as a further point of clarification, you refer
19 to Exhibit 5 as another passport. In fact, do you recognize
20 that, from your experience, as being an internal Russian
21 passport document, something we don't have in the U.S.?

22 A. I did not recognize that at the time, sir, no.

23 Q. Okay. Was that later explained to you by someone?

24 A. I was told that that was most likely what would, I
25 guess, be considered a domestic passport. Something similar

1 to that, like -- as you said, we would not have in the United
2 States.

3 MR. CIVILLE: Okay. Thank you. If I have just
4 one second, I think I'm finished.

5 THE COURT: Okay.

6 (Pause.)

7 MR. CIVILLE: Okay. Thank you, Your Honor. No
8 other questions.

9 Thank you, sir.

10 THE COURT: Ms. David, any other questions?

11 MS. DAVID: Just very briefly, Your Honor.

12 THE COURT: Sure.

13 REDIRECT EXAMINATION

14 BY MS. DAVID:

15 Q. So, sir, Government Exhibit 6, which is the Maldives
16 departure card, you indicated you happened to -- this was one
17 of the travel documents you had in your possession when you
18 left the Maldives -- Maldives; correct?

19 A. That is correct.

20 Are you talking about this exhibit, ma'am?

21 Q. Yes.

22 A. Yes, ma'am.

23 Q. Okay. And that stamp reference is an arrival stamp
24 of --

25 A. Yes, ma'am.

1 Q. -- June 21st? So approximately what time of the day,
2 then, did you, Mr. Seleznev, your colleagues, leave the
3 airport, "wheels up"?

4 A. It was approximately 11:20 a.m. on Saturday, July
5 the 5th.

6 Q. And approximately when, then, did you arrive in Guam?

7 A. We arrived in Guam at approximately 2:45 a.m. on July
8 the 6th.

9 MS. DAVID: One moment, Your Honor.

10 Your Honor, I will just ask my colleague,
11 Mr. Freedman, if he has any follow-up questions for the agent.

12 THE COURT: Mr. Freedman?

13 MR. FREEDMAN: I do not. Thank you.

14 MS. DAVID: Thank you, Your Honor. No further
15 questions for Mr. Schwandner.

16 THE COURT: You may step down.

17 THE WITNESS: Thank you, Your Honor.

18 MR. CIVILLE: Your Honor, I do have one question,
19 just to follow up to --

20 THE COURT: Okay. Go ahead.

21

22 RECROSS-EXAMINATION

23 BY MR. CIVILLE:

24 Q. I'm sorry. The last question for you: The
25 departure -- the -- looking at Exhibit 6 again, the departure

1 card and the passport number that appears there. You know, is
2 that the source of the passport number that was in the Red
3 Notice, do you know?

4 A. I believe so, sir. I'd have to look to confirm.

5 Yes, sir, it is.

6 Q. So the red -- the information on the Red Notice came
7 -- at least for that particular piece of information came from
8 the departure card?

9 A. The information in the Red Notice?

10 Q. I'm sorry. Yeah. That was my question.

11 A. No.

12 Q. The departure card, the immigration number there or
13 the passport number, that was the source of the information in
14 the Red Notice?

15 A. As far as what his passport number was?

16 Q. Yes.

17 A. Negative, sir. I do not know where the source of the
18 information was, how his passport number was obtained, but
19 this number would have -- he would have filled this out on
20 arrival in the Maldives.

21 Q. And, well -- all right. Is that where -- so on the
22 4th, when you met with the Maldivian police, is that where you
23 got his passport number?

24 A. Right. They had a -- they showed me a printout with
25 that passport number that indicated that he had arrived into

1 the Maldives on 21 June --

2 Q. Okay.

3 A. -- 2014.

4 Q. I guess my question is, was that information the
5 source of the passport number that went into the Red Notice?

6 A. I don't believe so, sir. I think the passport number
7 was already known from the Secret Service perspective. I'm
8 not sure what the source of that was, but I believe we had
9 already known what his passport number was or believed his
10 passport number to be.

11 Q. Thank you.

12 MR. FREEDMAN: I apologize, Your Honor. This is
13 Andrew Freedman, and I do actually have a couple question, if
14 I might.

15 THE COURT: All right. Go ahead, Mr. Freedman.

16 REDIRECT EXAMINATION

17 BY MR. FREEDMAN:

18 Q. Agent, would you take a look at Exhibit -- what I
19 believe is Exhibit 5-A.

20 A. The passport?

21 Q. Do you recognize that? I'm sorry. 5-B.

22 A. 5-B?

23 Q. Yeah. Do you recognize that?

24 A. Um...

25 Q. And it might help you to compare it to Exhibit 5-A.

1 A. (Witness compared exhibits.) You're talking about
2 the translation of the passport?

3 Q. I am.

4 A. Okay. I just -- I recognize the name and the
5 passport number.

6 Q. Okay. And if you turn -- let's look for a moment
7 first, if we could, at Exhibit 5-A.

8 A. Okay.

9 Q. If you turn to the fourth page, do you see a stamp
10 with some handwriting on it?

11 A. I do.

12 Q. And it's fair to say some of that is in Cyrillic or
13 Russian script?

14 A. Yes.

15 Q. Do you see some -- some Arabic numerals that you're
16 able to read?

17 A. Um, I see 18 2014.

18 Q. And one line above that, do you see some numerals?

19 A. One line above that, I see 26. I believe it's 26.

20 Q. And then in the far right?

21 A. And then the far right is 113.

22 Q. And if we turn to Exhibit 5-B, which is the -- a
23 translation on the document, on the third page of -- would you
24 turn to the third page of that?

25 A. Yes, sir. I see that.

1 Q. Do you see the same Arabic numerals there?

2 A. I do. I see Building 26, Apartment 113.

3 Q. And the two numbers, the 18 and 24, are part of a
4 date?

5 A. Yes, sir. 18 February 2014 in English.

6 Q. And so looking at the translation of the whole page,
7 what is the information that that stamp and that page are
8 providing?

9 A. It appears that it's providing his address.

10 Q. His residence?

11 A. His residence; yes, sir.

12 Q. Okay. And so I'm sure I'm going to butcher the sound
13 of it, but that's on Ostryakova Street, Building No. 26?

14 A. Yes.

15 Q. Apartment 113?

16 A. Ostryakova Street, Building 26, Apartment 113.

17 MR. FREEDMAN: Thank you. I have no further
18 questions.

19 MR. CIVILLE: I'm sorry.

20

21 RECROSS-EXAMINATION

22 BY MR. CIVILLE:

23 Q. Agent, am I correct that the information you were
24 just asked about -- that none of that information appears in
25 either the warrant or the indictment?

1 A. Not to my knowledge, sir.

2 Q. Thank you.

3 THE COURT: Okay. That was not -- as I
4 understand it, the 5-B has not been moved into evidence, Ms.
5 David.

6 MS. DAVID: Not yet, Your Honor.

7 THE COURT: Okay. Anything further?

8 MS. DAVID: I have nothing further. And if I can
9 just verify that with Mr. Freedman.

10 MR. FREEDMAN: And I do not either. Thank you.

11 THE COURT: You may step down, sir.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: Okay. Thank you.

14 MS. DAVID: Your Honor, the government next calls
15 Michael Fischlin.

16 THE COURT: Okay. How many witnesses do you
17 have, Ms. David?

18 MS. DAVID: That would be it.

19 THE COURT: That's the last witness? Okay.

20 THE CLERK: Sir, please raise your right hand.

21 (MICHAEL FISCHLIN, government witness, sworn.)

22 THE WITNESS: Yes, I do.

23 THE CLERK: Thank you, sir. Please be seated.

24 Please state your full name and spell your last name for the
25 record.

1 THE WITNESS: My name is Michael Stephen
2 Fischlin, F-I-S-C-H-L-I-N.

3
4 DIRECT EXAMINATION

5 BY MS. DAVID:

6 Q. Sir, where do you work?

7 A. I am a special agent with the Secret Service,
8 assigned to the Seattle field office.

9 Q. And approximately how many years have you been an
10 agent for that agency?

11 A. Seven years.

12 Q. As a preliminary matter, you are also being
13 translated, so when you do answer, just keep that in mind.

14 A. I'll do my best.

15 THE COURT: Why don't you, yeah, look at the
16 interpreter, who is seated here to our far left. And when
17 she's trying to translate to the defendant, you can see it and
18 then just slow down a little bit if you need to --

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: -- so it won't be interrupted. All
21 right. You may proceed. Thank you.

22 BY MS. DAVID: (CONTINUING)

23 Q. Agent Fischlin, are you currently the case agent for
24 the Seattle case of *United States v. Roman Seleznev*?

25 A. Yes.

1 Q. And if you can take a look at what's already been
2 admitted. In your -- in front of you is an exhibit binder.
3 If you can take a look at Exhibit 2.

4 THE COURT: Okay. Are you looking at the -- you
5 want the U.S. exhibits?

6 MS. DAVID: That is correct, Your Honor.

7 THE COURT: Okay. Okay. There you go.

8 BY MS. DAVID: (CONTINUING)

9 Q. Okay. So you've seen a copy of that superseding
10 indictment from your field office; correct?

11 A. Yes.

12 Q. Okay. And you -- you are currently part of the
13 investigative team for *USA v. Roman Seleznev*, that case;
14 correct?

15 A. Yes.

16 MR. CIVILLE: Your Honor, I'm sorry. I just
17 didn't hear the first part of that question, Your Honor.

18 THE COURT: Okay.

19 MR. CIVILLE: He was some part of what team?

20 BY MS. DAVID: (CONTINUING)

21 Q. You were part of the investigation with the Secret
22 Service of *U.S. v. Roman Seleznev*; correct?

23 A. Yes.

24 Q. And you just mentioned you -- you're familiar with
25 Exhibit No. 2, which is the indictment or the superseding

1 indictment out of Seattle; correct?

2 A. Yes.

3 Q. Can you also take a look, sir, at Government
4 Exhibit 9 and tell me if you've seen that copy before?

5 A. Yes, I have.

6 Q. And can you identify what Exhibit 9 is?

7 A. It is a Whois record for the domain "track2.name."

8 Q. And what information is reflected on this Exhibit 9?

9 A. A Whois record shows who owns a domain and how to
10 contact that --

11 MR. CIVILLE: I'm sorry, Your Honor. I'd object
12 to this on lack of foundation. This is a fairly technical
13 piece of information he's testifying to.

14 THE COURT: All right. You want to lay the
15 foundation, then?

16 BY MS. DAVID: (CONTINUING)

17 Q. Agent Fischlin, is Exhibit 9 one of the documents
18 obtained as part of this investigation in connection with the
19 indictment out of Seattle?

20 A. Yes.

21 Q. And you identified Exhibit 9 -- or you were going to
22 begin to identify Exhibit 9 as a track2.name exhibit. What is
23 the significance of this track2.name in connection with the
24 indictment that is Government Exhibit No. 2?

25 MR. CIVILLE: Your Honor, once again, the

1 objection isn't that it was part of the investigation. The
2 objection is that it calls for some technical interpretation,
3 and a foundation has not been laid as to this witness's
4 qualifications.

5 THE COURT: Why don't you lay the foundation as
6 to how he recognizes this exhibit. How does he know about
7 this type of exhibit?

8 BY MS. DAVID: (CONTINUING)

9 Q. How do you recognize Government Exhibit 9, Agent
10 Fischlin?

11 A. Well, I've been -- I've seen it via -- the ex-case
12 agent showed me a copy of this exhibit, and then the U.S.
13 Attorneys' Office prior to submitting it as an exhibit.

14 Q. And what do you understand -- also, based on your
15 experience with the Secret Service as an agent for that
16 agency, what Government Exhibit 9 and the information on
17 Government Exhibit 9 to be?

18 MR. CIVILLE: I'm sorry, Your Honor, but once
19 again, this is not a foundation. The witness has simply said
20 the ex-case agent and U.S. Attorney showed it to him.

21 MS. DAVID: Your Honor, let me just, for the
22 record --

23 THE COURT: Why don't you just --

24 MS. DAVID: -- state that this is a preliminary
25 proceeding where formal rules of evidence don't apply. This

1 witness is going to explain how he recognizes Exhibit 9 and
2 the other exhibits in connection with the investigation and
3 case.

4 MR. CIVILLE: Well, Ms. David is correct; the
5 Court does not have to strictly apply the rules of evidence.
6 Nevertheless, it doesn't mean you have to throw the rules of
7 evidence out the window. And this is apparently an important
8 piece of information. They wouldn't bring it to the Court --
9 you have to have some way of evaluating whether it's
10 sufficient to establish whatever they're trying to establish.
11 And if this witness doesn't really know what it is, if he
12 doesn't have the technical background to know what it is or to
13 draw conclusions from this, then it's not very helpful to you,
14 I suggest, Your Honor, and I don't think you are by any means
15 required to allow it in.

16 THE COURT: What's the offer of proof on this?
17 What is this exhibit for?

18 MS. DAVID: Your Honor, Exhibit 9 is a domain
19 registration for a track2.name website. I can ask the exhibit
20 [sic] what technical expertise is needed --

21 THE COURT: All right. Go ahead.

22 BY MS. DAVID: (CONTINUING)

23 Q. Sir, what technical expertise is needed to obtain
24 this information that's reflected in Government Exhibit 9?

25 A. The information is publicly available via a variety

1 of online resources. So it's easy to obtain this information.

2 Q. And how was this information obtained? Exhibit 9?

3 A. It was obtained by the ex-case agent via a publicly
4 available tool to research domains.

5 Q. And this public available tool that you just referred
6 to, what is that?

7 A. I believe he used DomainTools. It's a website to
8 research domains.

9 Q. And tell me what a domain is.

10 A. A domain is a website, essentially.

11 Q. Okay. And what is this track2.name website with
12 respect to this investigation?

13 A. It was a website that was a part of the
14 investigation. I don't know how much you want me to elaborate
15 on it.

16 Q. Is track2 listed as one of the aliases in the Seattle
17 indictment?

18 A. Yes.

19 Q. So having conducted a search of the track2.name
20 website from that publicly available tool, what information
21 was derived with respect to this track2.name website?

22 A. Who owns the domain and how to contact them.

23 Q. And looking at Government Exhibit 9, what information
24 did law enforcement rely on to associate ownership of this
25 track2.name website?

1 A. Under the registrant info would be the owner. And
2 the primary data they relied on was the e-mail address
3 rubensamvilech@yahoo.com.

4 MR. CIVILLE: Okay. Object -- Your Honor,
5 objection to the testimony "the primary address they relied
6 upon." I don't know who he's referring to, but that's clearly
7 hearsay.

8 THE COURT: All right. You want to just clarify
9 that? When you say "they," who are you talking about?

10 THE WITNESS: The case agents at the time when
11 this investigation started.

12 BY MS. DAVID: (CONTINUING)

13 Q. So --

14 THE COURT: Okay. All right. So the primary
15 address of the domain owner?

16 THE WITNESS: Yes. The primary contact info is
17 what that shows. It shows the information for the owner of
18 the domain and the e-mail address. That would be a contact
19 e-mail address for the owner.

20 THE COURT: Okay. Go ahead.

21 BY MS. DAVID: (CONTINUING)

22 Q. And what e-mail information was obtained based on
23 this search?

24 A. It showed that the e-mail address associated with the
25 owner was rubensamvilech@yahoo.com.

1 Q. And is the name Ruben Samvilech also one of the
2 listed aliases in that Seattle indictment?

3 A. Yes.

4 Q. With that information, what next -- what other law
5 enforcement steps was conducted to further determine who's
6 this rubensamvilech@yahoo.com?

7 A. Multiple federal search warrants were obtained from
8 Yahoo for the e-mail account rubensamvilech@yahoo.com.

9 Q. Let me direct your attention then to Government
10 Exhibit --

11 MR. CIVILLE: You know, I'm -- Your Honor, I'm
12 sorry. I have translation going on in my ear, and I'm not --
13 and that's very important. But I just missed the last part of
14 that answer.

15 THE COURT: You said -- about multiple search
16 warrants, you want to repeat that?

17 THE WITNESS: Yes, Your Honor. Multiple federal
18 search warrants were obtained for the -- from Yahoo for the
19 e-mail address rubensamvilech@yahoo.com.

20 MR. CIVILLE: Thank you.

21 BY MS. DAVID: (CONTINUING)

22 Q. Based on the search warrants, what, if any, e-mails,
23 for example, were retrieved in connection with this
24 rubensamvilech@yahoo.com e-mail?

25 A. In particular, there was an e-mail from PayPal.

1 Q. Okay. Can I -- please take a look at Exhibit 10-A.
2 And, sir, Exhibit 10-B is the English translation of 10-A.
3 Can you please identify 10-A?

4 A. Yes. It was an e-mail obtained via a federal search
5 warrant for the e-mail address rubensamvilech@yahoo.com.

6 Q. And what does 10-A represent?

7 A. Essentially, it shows -- it's an e-mail to Roman
8 Seleznev, e-mail address rubensamvilech@yahoo.com, dated
9 September 19th, 2009, from PayPal regarding a PayPal account.

10 Q. Okay. And taking a look at Exhibit 10-B, which is
11 the English translation, what information then -- what further
12 information is reflected on this screen shot, which is 10-A?

13 A. An e-mail address associated with the PayPal account
14 of rubensamvilech@yahoo.com and an address of Ostryakova 26,
15 Apartment 113, Vladivostok, Russia.

16 Q. Okay. And that address information that you
17 mentioned, you're referring to Exhibit 10-B; is that correct?

18 A. That is correct.

19 Q. Can you next take a look at Government Exhibit 11-A
20 and 11-B? Are these documents also obtained pursuant to the
21 search warrants that you referred to?

22 A. These records were obtained via a subpoena to PayPal.

23 Q. Okay. And what information, then, did PayPal provide
24 pursuant to the subpoena?

25 A. They provided a record which showed a PayPal account

1 in the name of Roman Seleznev. The e-mail address associated
2 with that PayPal account was rubensamvilech@yahoo.com.

3 Q. And, sir, are you referring to Government
4 Exhibit 11-A, which is the PayPal transaction log?

5 A. 11-A, yes.

6 Q. And can you explain what a PayPal transaction log is
7 in general?

8 A. The transaction log shows some of the activity on the
9 PayPal account. It shows when the account was created, when
10 an e-mail address was added to the account, and when a
11 physical address was added to the account, among other things.

12 Q. So if you can next take a look at Exhibit 11-B. For
13 the record, can you identify that exhibit?

14 A. Yes. It is the activity log that corresponds to the
15 first exhibit with the PayPal account.

16 Q. And looking at Exhibit 11-B, which is the activity
17 log associated with that rubensamvilech@yahoo.com address, do
18 you see the last column that's -- that shows action data, sir?

19 A. Yes.

20 Q. Does this activity log provide information as to
21 address of the user?

22 A. Yes.

23 Q. And can you tell us, from the -- starting from the
24 bottom of that column, where you would find that address
25 information?

1 A. Yes. It is on the far right, three rows up from the
2 bottom.

3 Q. And what information, then, did PayPal provide with
4 respect to the address of this user?

5 A. That on September 19, 2009, the address of Ostryakova
6 26, kv 113, Vladivostok, Russia, was added to the account.

7 Q. Okay. And that is a consistent address information,
8 for example, with respect to Exhibits 10-A and 10-B; correct?

9 A. Yes.

10 Q. Sir, can you next take a look at Exhibits 12-A and
11 12-B? Have you seen these two exhibits before?

12 A. Yes.

13 Q. What are they?

14 A. Records obtained during a forensic examination of
15 servers owned by HopOne Internet Corporation.

16 Q. Okay. And what is the connection of HopOne Internet
17 Corporation with, for example, the track2 website?

18 A. The HopOne servers were identified during the
19 investigation to store credit card data related to the
20 investigation.

21 Q. And what information is reflected on --

22 MR. CIVILLE: I'm sorry, Your Honor. That's not
23 really a responsive question. The question was what was the
24 relationship or -- I think is what she asked, between the
25 HopOne server and the track2, and the answer was HopOne

1 servers are used to store credit card data. That's not really
2 responsive to the question. It doesn't say how they're
3 related to track2.

4 THE COURT: All right. Ms. David?

5 BY MS. DAVID: (CONTINUING)

6 Q. Can you elaborate as to the connection?

7 A. Yes. The connection would be that track2.name was
8 identified as a site used to sell credit card information.
9 The HopOne servers were found to house some of the credit card
10 information that was sold on that site.

11 Q. So 12-A and 12-B are what, basically?

12 A. They reflect the records obtained during a forensic
13 examination of the HopOne servers identified during an
14 investigation. This record in particular relates to an
15 OZON.travel order which reflects travel for four people.

16 Q. And are you referring, sir, initially to
17 Exhibit 12-A?

18 A. Yes, initially to 12-A.

19 Q. And can you just tell us generally where on the page
20 you see information regarding OZON.travel?

21 A. The very top line.

22 Q. And what other information were you able to obtain
23 from this exhibit?

24 A. From 12-A, about midway down on the page, there is an
25 e-mail that is associated with the travel order.

1 Q. And what e-mail are you referring to?

2 A. Romariogrol@mail.ru.

3 Q. So unlike, for example, Exhibit 10-A, which is a
4 screen shot information -- correct?

5 A. Correct.

6 Q. What's this data reflected on 12-A and 12-B?

7 A. It was obtained during computer forensic -- forensics
8 of servers.

9 Q. Okay. And were these found, for example, in a
10 folder?

11 A. No.

12 MR. CIVILLE: I'm sorry. Obtained what, please?
13 I didn't hear the question. I'm sorry.

14 THE COURT: Okay. Ms. David.

15 BY MS. DAVID: (CONTINUING)

16 Q. I asked you, Agent, what data is reflected on
17 Exhibits 12-A and 12-B, and you began to say first where they
18 were -- from where they were obtained and to then identify
19 them.

20 A. Could you ask the question again?

21 Q. How was -- how were you able to obtain 12-A and 12-B?

22 A. Via computer forensics.

23 Q. Computer forensics of that HopOne server?

24 A. Correct.

25 Q. And computer forensics pursuant to a search warrant

1 of that HopOne server; correct?

2 A. Yes. Multiple HopOne servers.

3 Q. Okay. And is the information on 12-A and 12-B --
4 what -- how do you characterize this information?

5 A. It was a screen shot of what was found during a
6 forensic examination of those HopOne servers.

7 Q. 12-A and 12-B?

8 A. Correct.

9 Q. So you began to explain that in 12-A there was
10 information with respect to OZON.travel and an e-mail address,
11 Romariogrol@mail.ru. For the record, can you spell that?

12 A. R-O-M-A-R-I-O-G-R-O-l@mail.ru.

13 Q. What about information on Exhibit 12-B?

14 A. 12-B lists four travelers associated with the order.

15 Q. Okay. And was one of the traveler names pertained to
16 an individual identified as an adult with a first name
17 Svetlana and the last name Selezneva?

18 A. Yes.

19 Q. Okay. And where is that information reflected on
20 Exhibit 12-B?

21 A. About midway down the page.

22 Q. Okay. And that -- what is the gender information as
23 to that adult name?

24 A. Female.

25 Q. Was there any other name reflected on this 12-B

1 exhibit with respect to a female infant?

2 A. Yes.

3 Q. And first tell us where on this page you can find
4 that information and what is the information.

5 A. The bottom of the page and information lists a first
6 name of Eva, last name Selezneva.

7 Q. So you said these were screen shots from one of the
8 HopOne servers. Were these -- like where, for example, on the
9 hard drive were they found?

10 A. In the page file.

11 Q. Can you next take a look at Exhibits 13-A -- and 13-B
12 is the English translation of that exhibit -- and identify
13 them for the record?

14 A. Yes. It is another travel order obtained during a
15 forensic examination of the HopOne servers.

16 Q. And, again, when you mentioned HopOne server, that
17 was one of the servers used for the track2 website; correct?

18 A. Yes, to house credit card data.

19 Q. What information is reflected on 13-A? And that is a
20 two-page exhibit.

21 A. 13-A is the Russian version. Can I read off of 13-B,
22 the English translation?

23 Q. Pardon me. Yes, Your Honor -- yes, sir.

24 A. So 13-A shows the travel order is affiliated with
25 OZON.travel. Or the first page of 13-B. My apologies. The

1 second page shows that this order was for a flight on
2 Singapore Airlines, Flight 941 from Indonesia to Singapore on
3 April 7, 2010. And it lists two travelers. One of the
4 travelers listed is Roman Seleznev, date of birth July 23,
5 1984, citizenship Russia, and a document travel passport
6 number of 640410831.

7 Q. And, again, this information was obtained how?

8 A. Via computer forensics of the HopOne servers.

9 Q. Agent Fischlin, if you can take a look at Exhibit 5-A
10 and Exhibit 5-B, which is the English translation of
11 Exhibit 5-A. Starting first with Exhibit 5-A, can you flip to
12 the fourth page; and comparing that to Exhibit 5-B, which is
13 on the third page in the box identified as page 5 -- do you
14 see it, sir?

15 A. Yes.

16 Q. Okay. Basically, the information -- and it's been
17 already mentioned earlier -- the information on page 5 lists
18 an address for an internal Russian Federation passport in the
19 name of Roman Seleznev. Can you take a moment and take a look
20 at the address information reflected on the English
21 translation? And the Russian version on page 5 of
22 Exhibit 5-A. Was this the same address that you referenced in
23 the PayPal exhibit?

24 A. Yes.

25 Q. And, again, let me direct your attention to PayPal,

1 Exhibits 10-A and 10-B? Are you talking about the Vladivostok
2 address?

3 A. Yes.

4 Q. Okay. And for the record, what is that address
5 again?

6 A. Ostryakova 26, Apartment 113, Vladivostok, Russia.

7 Q. Directing your attention to Exhibit 12-B, which is
8 another screen shot information you mentioned that was
9 obtained from one of the HopOne servers. You identified two
10 individuals, an adult and infant. Do you have that exhibit in
11 front of you, sir?

12 A. Yes.

13 Q. Okay. If you can take a look at -- again comparing
14 the internal Russian Federation passport, Exhibit 5-A, and its
15 English translation. Starting with Exhibit 5-A, can you go to
16 the page where it lists pages 14 and 15 on that internal
17 passport? Are you there, sir?

18 A. Yes.

19 Q. Okay. Starting with -- and then can you turn to
20 Government Exhibit 5-B; and on the page that also lists a
21 block at No. 14 -- do you see that, sir?

22 A. Yes.

23 THE COURT: I'm sorry. 5-B, what page? 5-B
24 what? What are you looking at?

25 MS. DAVID: One -- 5-B-5, Your Honor.

1 THE COURT: 5-B-5. All right.

2 BY MS. DAVID: (CONTINUING)

3 Q. Do you see any reference to that adult female whose
4 name was reflected and retrieved on that screen shot
5 information from HopOne? And I'm, again, referring to
6 Exhibit 12-B.

7 A. Yes.

8 Q. And what name would that be?

9 A. Svetlana Selezneva.

10 Q. And that is a person identified as an individual who
11 had been previously married but now divorced; is that correct?

12 A. Yes.

13 Q. Associated with the Russian federation passport
14 belonging to a Roman Seleznev; is that correct?

15 A. Yes.

16 Q. Okay. If you -- focusing on that same exhibit, 5-B,
17 if you turn one page over, do you see the page that has a top
18 box portion identified as "children"?

19 A. Yes.

20 Q. Okay. And cross-referencing that to the Russian
21 passport page in 5-A --

22 THE COURT: I'm sorry. Russian passport page
23 5-A, what number?

24 MS. DAVID: Ten, Your Honor.

25 THE COURT: 5-A-10.

1 BY MS. DAVID: (CONTINUING)

2 Q. Are you there, sir?

3 A. Yes.

4 Q. Okay. What information is reflected as to that page
5 titled "children"?

6 A. A birth of a child.

7 Q. Identified how?

8 A. As Eva Selezneva, date of birth in 2009.

9 Q. With a gender information; is that correct?

10 A. That's correct. Female.

11 Q. Okay. And is that the same information that you had
12 referred to in Exhibit 12-B, which was the -- one of the
13 HopOne screen shot information?

14 A. Yes.

15 Q. And going back to the 12-B information, does -- in
16 addition to the adult name and the infant name of these
17 passengers reflecting on this OZON.travel document, does --
18 are there birthday information, for example, as to the adult
19 and child?

20 A. Yes.

21 Q. And are the dates of birth consistent with the dates
22 of birth reflected in the passport?

23 A. Yes.

24 Q. Earlier, Agent Fischlin, there was testimony about a
25 stamp on a passport identified as Government Exhibit 4-A. Can

1 you take a look at that? And the testimony -- and if you can
2 take a look at page 4 of that passport, on the left side of
3 that passport page. There was testimony earlier about a
4 Singapore stamp reflecting travel of April 7, 2010.

5 MR. CIVILLE: I'm sorry. What exhibit, please?

6 MS. DAVID: Exhibit 4-A.

7 MR. CIVILLE: Thank you.

8 BY MS. DAVID: (CONTINUING)

9 Q. Do you see that in front of you?

10 A. Yes.

11 Q. Okay. Can you again identify in Exhibit 13-B -- do
12 you recall identifying the information on 13-B, sir?

13 A. Yes.

14 Q. Okay. And, again, 13-B is -- is -- is what?

15 A. It relates to a travel order to Singapore on April 7,
16 2010.

17 Q. For a passenger name identified as Roman Seleznev; is
18 that correct?

19 A. Yes.

20 Q. And, again, this was information obtained from where?

21 A. Via a computer forensic examination of HopOne
22 servers.

23 Q. And looking again at Exhibit 13-B, the second page,
24 you identified earlier a travel passport number. Is that
25 number the same as the number on Exhibit 4-A?

1 A. The passport numbers are the same.

2 (Pause.)

3 BY MS. DAVID: (CONTINUING)

4 Q. Going back, sir, to Exhibit -- pardon me. Going
5 back, sir, to Exhibit 12-A. Again, this is the screen shot
6 information that was retrieved from one of the HopOne servers
7 you identified. And you mentioned an e-mail address and you
8 even identified and spelled out the e-mail address. What
9 e-mail address did you identify on Exhibit 12-A?

10 A. Romariogrol@mail.ru.

11 Q. Agent Fischlin, it's been identified earlier,
12 Exhibit 7-A, as one of the travel documents seized in the
13 Maldives. Do you see that same e-mail address on Exhibit 7-A?

14 A. Yes.

15 Q. And where would that e-mail address be reflected?

16 A. At the top.

17 Q. At the top left-hand corner?

18 A. Top left-hand corner, the addressing information.

19 Q. Okay. And for the record, Exhibit 7-B is the English
20 translation of that document. Again, it's -- the same e-mail
21 address is reflected; is that correct?

22 A. Yes.

23 THE COURT: That's the -- I'm sorry. Just for
24 clarification, the Romariogrol address?

25 THE WITNESS: Yes, Your Honor.

1 THE COURT: All right. Thank you.

2 MS. DAVID: Your Honor, at this time the
3 government move to admit the translated exhibits, which are
4 4-B, 5-B, 7-B, and the remaining exhibits, 9 through 13-B;
5 nine being the domain registration, 10-A being the screen shot
6 e-mail information from PayPal, 10-B being the translated
7 version of 10-A, 11-A and 11-B being the PayPal transaction
8 and activity log, 12-A and 12-B being the screen shot
9 information from the HopOne servers, and 13-A and 13-B being,
10 again, information obtained from the HopOne servers, and the
11 translated -- the translated version of Exhibit 13-A.

12 THE COURT: Okay. Anything further? That's it
13 on the exhibits, Ms. David?

14 MS. DAVID: Yes, Your Honor.

15 THE COURT: Okay. Mr. Civile, any --

16 MR. CIVILLE: Your Honor, we would preserve all
17 of our objections at this stage.

18 THE COURT: All right. So you're -- okay. I
19 understand that. You are continuing your objection to the
20 admission of these exhibits for purposes of a suppression
21 hearing motion you will have later on at trial?

22 MR. CIVILLE: Or any other pretrial motion. Yes,
23 Your Honor.

24 THE COURT: That's fine. That's fine. All
25 right. The Court will admit Exhibits 4-B, 5-B, 7-B, 9-B,

1 10-A, 11-A, 11-B, 12-A, 12-B, 13-A and 13-B into evidence for
2 purposes of this identity hearing.

3 (Exhibits 4-B, 5-B, 7-B, 9-B, 10-A, 11-A, 11-B,
4 12-A, 12-B, 13-A and 13-B admitted.)

5 MS. DAVID: One moment, Your Honor.

6 Your Honor, I would like to ask my colleague if
7 Mr. Freedman has any questions for Agent Fischlin.

8 MR. FREEDMAN: I do not. Thank you.

9 THE COURT: No questions. Okay.

10 Mr. Civile. Thank you.

11 MR. CIVILLE: Your Honor, I'd ask for a few
12 minutes to consult with my client before I start.

13 THE COURT: Sure.

14 MR. CIVILLE: May I inquire -- I don't know if my
15 co-counsel are still on the line or not.

16 THE COURT: Co-counsel for defense, are you still
17 there?

18 MR. RAY: Yes. This is Mr. Ray. I'm here.

19 MR. GOLDIN: Yes, Your Honor. Ely Goldin is
20 still on.

21 MR. CIVILLE: Okay, thank you.

22 Your Honor, perhaps could we ask for maybe a
23 ten-minute recess and then -- it just takes a while to
24 translate our questions.

25 THE COURT: All right. Ten minutes. That's

1 fine. Ten-minute recess.

2 MR. CIVILLE: But we need to have our client
3 remain.

4 THE COURT: That's fine. He can remain here in
5 the courtroom with counsel and his interpreter. Very well.
6 He may do so. Okay. Ten minutes. We can take a recess.

7 THE CLERK: All rise. The Court's in recess.

8 (Recess taken at 4:50 p.m.)

9 (Back on the record at 5:21 p.m.)

10 THE COURT: Please be seated. We're back on the
11 record. All counsel is present. Mr. Seleznev is present, and
12 so is the court interpreter.

13 You may proceed, Mr. Civile.

14 MR. CIVILLE: Thank you, Your Honor. Your Honor,
15 I would like to -- I'd ask the Court's indulgence. Mr. Goldin
16 -- 3 o'clock -- 3:30 in the morning there. He's been with us
17 the entire time. He has been admitted pro hac vice, and he
18 would like to conduct at least the first part of this
19 examination.

20 THE COURT: He may.

21 MR. CIVILLE: And, Your Honor, if I can stand up
22 here and just -- he doesn't have the numbered exhibits, so
23 I'll call out the numbers if he asks for them.

24 THE COURT: Okay. Very well. No problem.

25 MR. CIVILLE: Thank you.

1 THE COURT: Okay. Mr. Goldin, you may proceed.
2 Hello?

3 MR. CIVILLE: Hello, Ely?

4 THE COURT: Okay. Let's see. Mr. Ely Goldin,
5 are you there?

6 MR. CIVILLE: He was there a moment ago.

7 MR. GOLDIN: I am. I'm sorry, Your Honor. Can
8 you hear me okay now?

9 THE COURT: I can hear you now. All right. You
10 may proceed, sir. And Mr. Civile will be here to assist you
11 with the exhibits.

12 MR. GOLDIN: Thank you very much, Your Honor.

13

14 CROSS-EXAMINATION

15 BY MR. GOLDIN:

16 Q. Agent, good afternoon.

17 A. Hello.

18 Q. Do you have the indictment in front of you that was
19 returned by the grand jury in the Western District of
20 Washington?

21 MR. CIVILLE: That's Exhibit 2, the superseding
22 indictment.

23 THE WITNESS: Yes.

24 BY MR. GOLDIN: (CONTINUING)

25 Q. Looking at that indictment, would you agree with me

1 that the indictment makes no effort to identify the accused by
2 the fact that he lives in Vladivostok, Russia?

3 A. I haven't read the whole thing right before coming up
4 here, so from memory, I couldn't answer that question.

5 Q. As you sit here today, do you have any reason to
6 believe that the indictment attempts to identify the accused
7 by the fact that he lives in Vladivostok, Russia?

8 A. I don't believe that's specifically mentioned in the
9 indictment.

10 Q. And do you have any reason to believe the -- that the
11 indictment attempts to identify the accused by the fact that
12 he lives at a particular address within the Russian
13 Federation?

14 A. I do not believe it mentions a specific address, no.

15 Q. Do you know whether the indictment attempts to
16 identify the accused by his current marital status?

17 A. I do not believe it does.

18 Q. Do you know whether the indictment attempts to
19 identify the accused by his former marital status? You
20 mentioned something about a former spouse.

21 A. I do not believe it does.

22 Q. Does the indictment attempt to identify the accused
23 by the fact that he has any children?

24 A. I do not believe it does.

25 Q. Does the indictment attempt to identify the accused

1 by his -- by some reference to his father?

2 A. No.

3 Q. Does the indictment make any mention that the
4 accused's father is a member of the Russian parliament or
5 Duma?

6 A. I do not believe the indictment does.

7 Q. Does the indictment make reference to the accused's
8 patronymic name or middle name?

9 A. I do not believe it does.

10 Q. Agent, do you speak Russian by any chance?

11 A. I do not.

12 Q. Was there a Russian-speaking Secret Service agent who
13 was also physically on the ground at Male?

14 A. I do not know. I was not there.

15 Q. Do you have any knowledge, either firsthand,
16 secondhand or thirdhand, whether there were any
17 Russian-speaking Secret Service agent physically present when
18 the person before the Court was taken into custody?

19 A. I do not know.

20 Q. Do you know whether the indictment attempts to
21 identify the defendant -- strike that.

22 Do you know whether the indictment attempts to
23 identify the accused by the fact that he traveled to either
24 Singapore or Indonesia or somewhere else?

25 A. No, I do not believe it does.

1 Q. Do you know whether the pre-indictment investigation
2 developed any photographs of the person that is accused in the
3 indictment?

4 A. I do not know. A photo was obtained, but I do not
5 know if it was before the date of this indictment or after.

6 Q. Are you referring to the photo on the Red Notice?

7 A. Yes. I do not know --

8 Q. Has any -- go ahead.

9 A. I do not know what date that was obtained, so I
10 cannot say if it was pre-indictment or after.

11 Q. And you don't know who took that photo; correct?

12 A. No, I don't.

13 Q. And a photo of the person who is seated before the
14 Court -- there is no witness or -- strike that.

15 There is no witness that during the investigation or
16 pre-indictment pointed to a photo and said, "That's the guy.
17 That's the person you want"?

18 A. I do not know.

19 Q. Was there any information regarding identity provided
20 to the Secret Service or any other government agencies by a
21 cooperating witness or a co-defendant in some other case?

22 A. I do not know.

23 Q. You have no knowledge whether the source of the
24 identifying information comes from any witness or confidential
25 informant or co-defendant or anyone else?

1 A. I'm unsure. I know that --

2 Q. I -- please go ahead. I'm sorry.

3 A. I know that some of the identifying information was
4 obtained via those computer forensics.

5 Q. Are you a forensic computer professional yourself?

6 A. Yes, I am.

7 Q. Did you conduct the actual forensic examinations to
8 which you testified?

9 A. I did not.

10 Q. Do you know who conducted the forensic examinations
11 to which you testified?

12 A. I know one of the forensic examiners, yes.

13 Q. And did you rely on any reports made by that forensic
14 examiner?

15 A. No. Had communications with him, though.

16 Q. What kind of communications?

17 A. Verbal.

18 Q. Verbal communications?

19 A. Verbal communications.

20 Q. Over the telephone or in person?

21 A. In person.

22 Q. And when did those communications take place?

23 A. Approximately three weeks ago; two, three weeks ago.

24 Q. Is that before or after the defendant -- the person
25 before the Court was taken into custody?

1 A. After.

2 Q. So did you have any conversations with any computer
3 professional or forensic computer professional employed by the
4 government prior to the detention of the person before the bar
5 of the Court?

6 A. I personally did not.

7 Q. Now, the indictment makes reference to a bunch of
8 nicknames or nics, N-I-C-S, supposedly used by the accused in
9 connection with certain alleged criminal activity. Do you see
10 that?

11 A. I do.

12 Q. As you sit here before the Court, do you have any
13 documentary evidence to show the judge that the person before
14 the Court used the nickname Shmak, S-H-M-A-K?

15 A. I do not have any documents on me right now to
16 support that.

17 Q. Do you have any document that would support that the
18 person before the Court used the nickname Zagreb, Z-A-G-R-E-B?

19 A. Not at this time.

20 Q. Do you have any document that the person before the
21 Court used the nickname Smaus, S-M-A-U-S?

22 A. Not on me at this time.

23 Q. What about Bandysli64, B as in bravo A-N-D-Y-S as in
24 Sam L-I-6-4?

25 A. Not on me at this time.

1 Q. How about Bulba, B-U-L-B-A?

2 A. Not on me at this time.

3 Q. How about N-C-U-X?

4 A. Not on me at this time.

5 Q. Now, you gave some testimony, Agent, on direct
6 examination regarding a name called -- strike that.

7 You gave some testimony on direct examination
8 regarding something called track2. Do you recall that?

9 A. Yes.

10 Q. And I believe, if I'm not mistaken, you told the
11 Court that your predecessor or someone that had previously
12 worked for the Secret Service ran a domain search on a website
13 that bore the track2 name; correct?

14 A. Yes. Track2.name.

15 Q. Do you have any documentary evidence to show the
16 Court that the person seated before the Court actually used
17 the nickname track2 as opposed to evidence concerning a
18 website that has the letters track2 in it?

19 A. I do not have those documents on me at this time.

20 Q. Now, with regard to the website called track2, your
21 predecessor in interest ran a Whois domain registration search
22 on that website; correct?

23 A. Yes.

24 Q. And he used a domain search tool called Whois? Or is
25 it GoDaddy? Which one did he use?

1 A. I believe he used the site DomainTools. It is a site
2 which you can use to do a Whois search.

3 Q. And which website did your predecessor in interest
4 search?

5 A. Track2.name.

6 Q. And that is one of the four websites identified in
7 paragraph 6 of the indictment?

8 A. Yes.

9 Q. And that is the same paragraph that alleges that
10 Roman Seleznev and others unknown --

11 A. Yes.

12 Q. -- rented and configured servers and computers in
13 countries outside the United States?

14 A. Yes.

15 Q. And these servers were then used, according to the
16 indictment, for hosting carding forum websites?

17 A. Yes.

18 Q. Or websites used to allegedly sell stolen credit card
19 numbers, right?

20 A. Yes.

21 Q. So one of the websites -- I guess it's your
22 contention that one of the websites -- that track2.name is the
23 website that host -- that contained information that somehow
24 linked to some servers that were set up on -- somewhere around
25 the world?

1 A. Yes.

2 Q. Did you run a -- or your predecessor run a domain
3 registration check on the other three websites listed in
4 paragraph 6 of the indictment?

5 A. I believe so, but I do not have those documents on me
6 today.

7 Q. So the only documents that you have on you today for
8 purposes of the Rule 5 hearing is the reverse domain
9 registration search on the track2.name website; correct?

10 A. Yes. Regarding those domains, yes.

11 MR. CIVILLE: That would be Exhibit 9.

12 BY MR. GOLDIN: (CONTINUING)

13 Q. And, ultimately, that led you to an address in
14 Vladivostok that you contend is the defendant's address?

15 A. Yes.

16 Q. But the -- you'll agree with me that the indictment
17 itself makes no reference to any address whatsoever; correct?

18 A. Not a physical address.

19 Q. Do you know how many adult individuals resided at the
20 physical address in Vladivostok --

21 A. No.

22 Q. -- or -- at or around the time of the indictment?

23 A. Could you ask that question again, please?

24 Q. Sure. Do you know how many adult individuals
25 physically resided at the address which you claim is tracked

1 to the defendant in or around the time of the indictment?

2 A. No.

3 Q. But you produced or you made reference to some travel
4 documents that the government supposedly found as part of its
5 investigation, showing that multiple adult persons traveled, I
6 guess, around the world that are somehow associated with that
7 address? Is that what you're telling us?

8 A. No.

9 Q. All right. Let me ask the scope and then the
10 question. What is the connection between the indictment and
11 the person seated before the bar of the Court?

12 A. That would be via two nicknames, the nicknames track2
13 and a nickname Ruben Samvilech.

14 Q. Okay. And focusing on the nickname Ruben Samvilech,
15 it is your contention that there are e-mails that were sent
16 from that nickname; correct?

17 A. Yes, sent to that e-mail address.

18 Q. And what is that e-mail address?

19 A. Rubensamvilech@yahoo.com.

20 Q. So you put a subpoena on Yahoo.com to discover the
21 identity of the person who's registered the name Ruben
22 Samvilech?

23 A. I know they executed three search warrants. I don't
24 know if they executed a subpoena on it.

25 Q. When you say "three search warrants," is there some

1 significance to the fact that there's three? In other words,
2 was this impossible to get through one search warrant?

3 A. Sure, different time frames. So the e-mail account
4 will contain different content in it at different points in
5 time.

6 Q. So which of the three subpoenas actually yielded
7 information that is part of your testimony today? Was that
8 subpoena one, subpoena two or subpoena three?

9 A. I don't know. I know three search warrants were
10 executed and this was obtained from one of them.

11 Q. And what is the time frame of the search warrant that
12 actually yielded the information regarding which you testified
13 to today?

14 A. I'm unsure. It was prior to my assignment to the
15 case.

16 Q. And what is the time frame for the e-mail that you
17 contend ties the person before the bar of the Court to the
18 indictment?

19 A. May I look at the exhibit to get the date of the
20 e-mail?

21 Q. Of course. Of course.

22 MR. CIVILLE: I believe you're talking about
23 Exhibit 10-A. 10-B is the trans- -- is perhaps the
24 translation.

25 THE WITNESS: The e-mail is dated September 19,

1 2009.

2 THE COURT: I'm sorry. Where are you looking at,
3 Agent?

4 THE WITNESS: Um, Your Honor, at Exhibit 10-A and
5 10-B.

6 THE COURT: Okay. 10-A. I'm looking -- okay.
7 Like six lines down from the left, top left, 10-A?

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: You have September 19, 2009. Okay.

10 BY MR. GOLDIN: (CONTINUING)

11 Q. And the indictment reference is a time period of
12 October 2nd, 2009, continuing through February 22, 2011; is
13 that right?

14 A. I'd have to review it.

15 Q. Paragraph 1 of the indictment?

16 THE COURT: Exhibit 2?

17 THE WITNESS: Yes.

18 MR. CIVILLE: Exhibit 2.

19 THE WITNESS: From October 2, 2009, to
20 February 22nd, 2011, on or about.

21 MR. GOLDIN: Your Honor, not having these
22 documents in front of me and being 3:30 where I am, that's all
23 the questions I have.

24 THE COURT: Okay. Do you have a -- but you have
25 a copy -- you don't have a copy of the indictment? You want

1 to know what the dates are that it states just initially?

2 MR. GOLDIN: No. I do have a copy of the
3 indictment, Your Honor. It was e-mailed to me by the U.S.
4 Attorney in the Western District of Washington. I'm looking
5 at it electronically.

6 THE COURT: Okay. Very well. Okay. No further
7 questions?

8 MR. CIVILLE: If I may, Your Honor.

9 THE COURT: You may proceed.

10 MR. CIVILLE: Thank you, Your Honor.

11 RECROSS-EXAMINATION

12 BY MR. CIVILLE:

13 Q. Agent, look at Exhibit 11, the PayPal account, it has
14 as the name Seleznev, Roman, and it has the e-mail address
15 you've testified about. But on account type, it says "Russian
16 personal unverified." Do you see that?

17 A. Yes.

18 Q. Okay. Are you familiar with unverified accounts?

19 A. No, I'm not.

20 Q. Okay. Do you know if that -- through your
21 investigation, do you know that means that pretty much anybody
22 can open an account and use whatever name they choose?

23 A. No.

24 Q. And that -- do you know that means that PayPal does
25 not verify the information that it's provided?

1 A. No, I do not.

2 Q. Okay. Have you inquired into that, whether they
3 verified the information that's provided?

4 A. I personally have not.

5 Q. Looking at Exhibit 9, the track2 domain name, that
6 shows a registrant of Alexey Davydov?

7 A. Yes.

8 Q. Okay. And that is a different name than the name of
9 the person accused in the indictment?

10 A. Yes, it is.

11 Q. Okay. And that is not a name -- that is not any of
12 the aliases named in the indictment?

13 A. No.

14 Q. Were you involved at all in the preparation of the
15 Red Notice of -- I think that's, what, Exhibit 3?

16 A. I was aware of it but I didn't prep it.

17 Q. Did you provide any of the information that's --
18 that's contained in the Red Notice?

19 A. No. I didn't need to.

20 Q. Do you know who did prepare this?

21 A. AUSA Norman Barbosa.

22 Q. Who is he, please?

23 A. He's the AUSA on the case in the Western District of
24 Washington.

25 Q. He's not on the line with us now, I don't believe.

1 A. (Witness shrugged.)

2 Q. Do you know?

3 A. I don't know.

4 Q. Okay. When did you become involved -- you made
5 several references to the person you took over from. When did
6 you -- what year did you become involved?

7 A. This year.

8 Q. Oh, just -- okay. So you were not involved when this
9 case went to the grand jury?

10 A. No, I was not.

11 Q. Not involved in any of the investigation up until
12 this year?

13 A. That's correct.

14 Q. If you'll look at page 5-B-2 on Exhibit 5, please.
15 And do you see on 5-B-2 that under the name -- in the bottom
16 box there, it shows "Photo," although that's blank, right?

17 A. Yes, it is.

18 Q. And then to the right of that is -- this is the
19 English translation of what's taken from the passport that was
20 seized -- the local Russian passport seized in the Maldives.
21 That's your understanding, right?

22 A. Yup.

23 Q. Okay. And then it shows the name -- last name
24 Seleznev, name Roman, and then paternal name Valerievich.

25 A. (Nodded head.)

1 Q. And are you familiar with the Russian use of paternal
2 names?

3 A. I am not.

4 Q. Or patronymics, they're sometimes called?

5 A. No, I'm not.

6 Q. All right. And would you agree with me that the name
7 Roman Valerievich does not appear in the indictment?

8 A. I don't believe it does.

9 Q. Okay.

10 MR. CIVILLE: If I could have just a moment.

11 THE COURT: Mm-hmm.

12 (Pause.)

13 BY MR. CIVILLE: (CONTINUING)

14 Q. Have you participated, Agent Shalin -- did I
15 pronounce that -- I'm sorry. Pronounce your last name.

16 A. Fischlin. Fischlin.

17 Q. My hearing is going. I thought it began with an S.

18 A. F, as in Frank, Fischlin.

19 Q. Oh, Fischlin. I'm sorry. Boy, I was really off.

20 Okay. Other than the three search warrants you've
21 mentioned, have there been any other search warrants executed
22 with respect to this matter?

23 A. I believe there have been.

24 Q. Do you know how many?

25 A. I don't.

1 Q. Okay. When was the last one that you're aware of?

2 A. I'm unsure.

3 Q. Okay. What efforts, if any, have you undertaken to
4 ascertain the identity of Alexey Davydov, the person named as
5 the registrant in Exhibit 9?

6 A. I have not taken any.

7 Q. Do you know if any -- just so I'm not -- you're not
8 being too literal, when I say "you," do you know if the --
9 your agency has or any other investigative personnel?

10 A. I do not know.

11 Q. On the face of it, it would appear, then, that the
12 track2 name is actually registered to a person named Alexey
13 Davydov based on the evidence before us; is that right?

14 A. That's the registered owner with the e-mail address
15 seen on the exhibit.

16 Q. Okay. And do you have any -- okay. And you just
17 don't have any information on who this Alexey Davydov might
18 be?

19 A. No.

20 MR. CIVILLE: Your Honor, that's all I have.

21 THE COURT: All right. Ms. David? And then
22 we'll close up here.

23

24 REDIRECT EXAMINATION

25 BY MS. DAVID:

1 Q. Agent Fischlin, can you take a look again at
2 Exhibit 9 --

3 A. Yes.

4 Q. -- which is the domain registration for that website
5 track2.name?

6 A. Yes.

7 Q. Counsel asked you questions about the registrant
8 information on Exhibit 9, you recall?

9 A. Yes.

10 Q. Questions about the Alexey Davydov name and the
11 e-mail address rubensamvilech@yahoo.com. Do you recall that?

12 A. Yes.

13 Q. You also indicated earlier that your -- you're
14 trained in computer forensics; correct?

15 A. Yes.

16 Q. Tell me, if someone is going to manage a website,
17 which would be the more trustworthy information if you want to
18 make sure you know what's happening to that website?

19 A. Contact information.

20 Q. And with respect to Government Exhibit 9, what
21 contact information is reflected?

22 A. An e-mail address.

23 Q. And, again, that is rubensamvilech@yahoo.com?

24 A. Yes.

25 Q. And using that contact information, agents and you --

1 you testified that that e-mail address tied law enforcement to
2 a PayPal screen shot; is that correct?

3 A. Yes.

4 Q. Are you familiar with PayPal?

5 A. A little bit, yes.

6 Q. And, generally, what is PayPal?

7 A. A payment service.

8 Q. Okay. So whether you receive or make the payment;
9 correct?

10 A. That's correct.

11 Q. So at some point, you also want your contact
12 information with PayPal to be reliable; is that correct?

13 A. Sounds correct to me.

14 Q. Okay. And with this rubensamvilech Yahoo e-mail on
15 that track2.name website, again, PayPal provided information
16 that that e-mail address was connected to Roman Seleznev with
17 the Vladivostok Ostryoka[sic] address; is that correct?

18 A. Yes.

19 Q. And earlier you testified about obtaining, for
20 example, screen shot information from -- from one of the
21 servers that the track2 website used; is that correct?

22 A. Could you ask the question again, please?

23 Q. Okay. Earlier you reference about a HopOne server;
24 correct?

25 A. Yes.

1 Q. And how screen shots were retrieved from that server
2 with respect to this investigation. Do you recall that?

3 A. Yes. Yes.

4 Q. And I'm referring you to -- I'm referring you, for
5 example, to Exhibit 13-A and the translated version, which is
6 13-B.

7 A. Yes.

8 Q. That's information about one of the screen shots from
9 that server; correct?

10 A. It's information obtained from examination of the
11 server, yes.

12 Q. Correct.

13 And you mentioned earlier that 13-A reflects a travel
14 reservation under the name Roman Seleznev for travel to
15 Singapore on April 7, 2010; is that correct?

16 A. Yes.

17 Q. And that stamp, you recall, you noticed on Government
18 Exhibit 4-A, which is the one of the -- the Russian Federation
19 passport of Roman Seleznev; is that correct?

20 A. That's correct.

21 MS. DAVID: May I have a moment, Your Honor?

22 THE COURT: Okay.

23 (Pause.)

24 MS. DAVID: Your Honor, I have no further
25 questions, unless my colleague, Mr. Freedman, does.

1 THE COURT: Mr. Freedman?

2 MR. FREEDMAN: I do not. Thank you.

3 MR. GOLDIN: Your Honor, this is Ely Goldin. May
4 I briefly?

5 THE COURT: Go ahead, Mr. Goldin.

6 MR. GOLDIN: With your permission, Your Honor.

7 THE COURT: Yes.

8

9 RECROSS-EXAMINATION

10 BY MR. GOLDIN:

11 Q. Agent, do I understand you correctly that the PayPal
12 account to which you testified was used to book travel for a
13 person named Roman Seleznev?

14 A. I don't know anything about travel, just there's a
15 PayPal account in the name of Roman Seleznev.

16 Q. And the travel documents that you mentioned or the
17 travel itineraries that you mentioned, were those travel items
18 purchased with that PayPal account?

19 A. I don't know.

20 Q. PayPal is an e-commerce portal that allows people to
21 pay for services purchased over the Internet; correct?

22 A. Yes.

23 Q. And PayPal enables people to actually pay for those
24 services with money that emanates from someplace; correct?

25 A. Yes.

1 Q. Did your investigation pinpoint any credit cards
2 associated with the PayPal account that you claim belongs to
3 the defendant?

4 A. I do not know.

5 Q. Did your investigation pinpoint any bank account
6 which is linked to the PayPal account that you attribute to
7 Mr. Seleznev?

8 A. I do not know.

9 Q. But you know that the Secret Service served a
10 subpoena on PayPal; is that correct? Or search warrant?

11 A. That's correct.

12 Q. Do you know if that search warrant or subpoena
13 revealed any financial information linking the person before
14 the Court to the PayPal account with money, credit cards, a
15 wire transfer, any financial connection whatsoever?

16 A. I do not know.

17 Q. So the only connection between the PayPal account
18 that you gave testimony today is the fact that somewhere on
19 the Internet it is listed that Roman Seleznev owns that PayPal
20 account?

21 A. That PayPal produced a record showing that there is a
22 PayPal account in Roman Seleznev's name.

23 Q. Do you know -- did PayPal produce a record showing
24 who set up that PayPal account?

25 A. They just provided information that was provided by a

1 user who entered the information.

2 Q. Did they provide a merchant services agreement like
3 the kind you would get if I'm a store and I sign up to accept
4 American Express, Visa or MasterCard? Is there an electronic
5 or written end user license agreement or any merchant
6 agreement between Seleznev before the Court and PayPal that
7 you were able to find?

8 A. I don't have any documents like that. I believe you
9 do have to accept a Yula when you sign up, but I don't have
10 any documents with me today.

11 Q. Do you know if the government attempted to
12 investigate any financial connections between the accused
13 person in the indictment and PayPal --

14 A. I do not know.

15 Q. -- to establish a link between that person and some
16 bank or some credit card or some other financial institution
17 that might be the source of payments?

18 A. I don't know.

19 Q. The indictment before you accuses the defendant of
20 running a massive carding scheme; correct?

21 A. Correct.

22 Q. And the indictment suggests that the defendant earned
23 illicit profits as a result of his activities; correct?

24 A. Yes.

25 Q. Is there any information that you can provide the

1 Court that shows that the supposed illicit profits went into a
2 bank account or a -- went -- a bank account associated with a
3 person named Roman Seleznev?

4 A. I don't have any records with me like that today, no.

5 Q. Do you have any documents to show that any illicit
6 profits went into an account that is affiliated in any way
7 with the person that is seated at the bar of the Court?

8 A. I don't have anything like that with me today.

9 Q. When the government took Mr. Seleznev into custody,
10 they took from him credit cards, did it not?

11 A. Yes. There were credit cards in his possession.

12 Q. Have you linked those credit cards to any of the
13 allegations in the indictment?

14 A. Not at this time.

15 Q. Have you linked those credit cards to any of the
16 allegation -- to any of the -- strike that.

17 Have you linked those credit cards to the PayPal
18 account to which you testified?

19 A. Not at this time.

20 Q. Have you linked those credit cards to the servers
21 which supposedly were used in connection with the illicit
22 activity?

23 A. Not at this time.

24 Q. Have you linked those credit cards to anything that
25 is even remotely related to the indictment?

1 A. Not at this time.

2 MR. GOLDIN: No further questions.

3 THE COURT: Okay.

4 MR. CIVILLE: Your Honor, if I may, just a couple
5 follow-up questions to that.

6
7 RECROSS-EXAMINATION

8 BY MR. CIVILLE:

9 Q. Agent, going back to Exhibit 11-B, PayPal log. You
10 had earlier testified that the indictment -- paragraph 1 of
11 the indictment states that beginning October 2, 2009, and
12 continuing through February 22, 2011, it alleges certain
13 criminal activity. And my question is, on Exhibit 11-B, this
14 PayPal log shows activity of September 27, 2009, through
15 September 19, 2009; is that correct?

16 A. Yes.

17 Q. And that's before the period specified in the
18 indictment?

19 A. Yes, but the indictment notes that activity began no
20 later than October 2, 2009.

21 Q. And did you make any effort, you know -- and "you,"
22 once again I refer to the entire Secret Service or whatever --
23 and whatever other law enforcement is involved in this
24 investigation -- into determining whether at any time after
25 September 19th did Alexey Davydov, the person named in

1 Exhibit 9 -- did he reside at the address of Ostryakova 26,
2 113, in Vladivostok that we've been discussing?

3 A. No.

4 Q. Okay. And I believe the answer to this -- but you
5 don't know what other persons may have been living at that
6 address?

7 A. No.

8 Q. Okay. And if someone were living at an address and
9 then moved away and -- well, strike that.

10 With respect to Exhibit 9, you said the contact
11 information -- you thought the e-mail was the most important
12 piece of information. And if -- tell me how this works now.
13 If somebody has an e-mail and then they stop using it for some
14 reason or they share that e-mail with somebody else, but the
15 original -- even assuming the original owner stopped using it,
16 anybody could use -- continue to use that e-mail; correct?

17 A. So long as it's active and you had the proper user
18 credentials.

19 Q. Okay. And user credentials would really only mean a
20 password?

21 A. Yeah. Username, password; yes, sir.

22 Q. And going to Exhibit 12-B. Did you identify who
23 Sergei Nikulnikov is?

24 A. No.

25 Q. And that was a person who was apparently traveling

1 with the identified -- I think you said was the --
2 Mr. Seleznev's wife?

3 A. Yes.

4 Q. And child?

5 A. Yes.

6 Q. Okay. So there was an adult male apparently, a
7 Sergei, and you don't have any information on him?

8 A. I don't.

9 Q. Okay. Thank you.

10 I ask you to have a look at Defense Exhibit 2. And
11 that's the declaration of Ely Goldin. And I recognize you may
12 not have seen that before, so I give you a moment to look at
13 it. And what's -- Mr. Goldin is the lawyer who was just
14 questioning you a few moments ago. But attached to that as
15 Exhibit 1 is a printout which he represents is from a -- a
16 website called -- I'll spell it: O-D-N-O-K-L-A-S-S-N-I-K-I
17 dot R-U, Odnoklassniki in Russian, and showing 162 people just
18 with that one website -- this is for people to identify old
19 classmates -- having the name Roman Seleznev -- Roman
20 Seleznev. Sorry. Did you -- did your investigation look into
21 any other Roman Seleznevs?

22 A. I don't know.

23 Q. Okay. That would not have been part of the work you
24 did?

25 A. No.

1 Q. Was your function limited -- or your role, not -- was
2 your role really concentrated on the computer aspects of this
3 case?

4 A. My role was to become the agent -- the case agent
5 upon the departure of the previous case agent.

6 Q. Okay. And I don't really -- I'm sorry. I just don't
7 know what that means, to say you're the case agent.

8 A. Sure. Previous case agent moved on. Somebody has to
9 take that case in Seattle to work it, and so it was reassigned
10 to me.

11 Q. Okay.

12 A. It stays in the field office. It doesn't move with
13 an individual to different locations.

14 Q. Okay. I think what I'm asking is, when you say
15 you're the case agent, are you in charge of the case, then,
16 for the Secret Service?

17 A. I would be the investigating agent on the case now,
18 yes.

19 Q. Okay. So -- so you're at the top of the totem pole
20 as far as the investigators go for this particular case?

21 A. At this point in time, yes.

22 Q. Okay. Okay.

23 MR. CIVILLE: Thank you, Your Honor. Very
24 patient. Thank you.

25 THE WITNESS: Oh, you're welcome.

1 THE COURT: All right.

2 MS. DAVID: Your Honor, I would ask if my
3 colleague, Mr. Freedman, has any follow-up questions.

4 THE COURT: Okay. Mr. Freedman?

5 MR. FREEDMAN: I don't, Your Honor. Thank you.

6 THE COURT: Okay. Any further evidence,
7 Ms. David?

8 MS. DAVID: No, Your Honor.

9 MR. CIVILLE: Your Honor, we would offer into
10 evidence and we -- since the rules of evidence are relaxed, we
11 would ask to do this without a witness -- without testimony, I
12 should say. We offer into evidence Exhibit 1, which is the
13 declaration of a language expert -- a Russian language expert,
14 Tatiana Hay. That's -- and also Exhibit 2, the declaration of
15 Ely Goldin and the exhibit attached to that from the Russian
16 website.

17 THE COURT: All right.

18 MS. DAVID: Your Honor, I would defer to my
19 colleague, Mr. Freedman.

20 THE COURT: Mr. Freedman?

21 MR. FREEDMAN: We have no objection on behalf of
22 the government, Your Honor.

23 THE COURT: Very well. Exhibits 1, 2 and 3 are
24 admitted without objection.

25 (Exhibits 1, 2 and 3 admitted.)

1 MR. CIVILLE: Thank you, Your Honor.

2 THE COURT: Okay. There being no further
3 evidence, Mr. Civile?

4 MR. CIVILLE: No further evidence, Your Honor.

5 THE COURT: Okay. Let me, just for formality
6 sake, Mr. Civile, before -- before the Court makes its final
7 ruling, I do want to just give the defendant some of the
8 general rights. This is kind of a little backwards that we
9 presented -- yeah, when it was presented --

10 MS. DAVID: May the witness be excused, Your
11 Honor?

12 THE COURT: Oh, I'm sorry. Yeah. I'm sorry.

13 THE WITNESS: Thank you, Your Honor.

14 THE COURT: You may be excused. You may step
15 down. That's right.

16 So, Mr. Civile, let's -- let me just indicate a few
17 things to your client to make sure he understands these
18 matters. Do you want to -- can you come up to the podium, Mr.
19 Civile, with your client and the court interpreter?
20 Interpreter can come up as well.

21 Let me just give you a few rights. All right. So,
22 first of all, from what has been presented so far, the alleged
23 offense is committed in the State of Washington, the defendant
24 has been arrested with a warrant, and an indictment has been
25 returned. A superseding indictment.

1 INTERPRETER: Is it a question?

2 THE COURT: No. I'm just informing him of these.
3 Does he understand?

4 THE DEFENDANT: Yes.

5 THE COURT: Okay. Very well.

6 The defendant is a foreign national, and regardless
7 of his immigration status, the Court -- I believe -- I assume
8 that Judge Manibusan had advised him of his right to consular
9 notification. Did he not? Did he do that?

10 MR. CIVILLE: You know, I believe he did, Your
11 Honor. And he -- he has -- the Russian consulate has come to
12 Guam and visited with him.

13 THE COURT: Okay. So -- very well. So he has
14 already met with the Russian consulate officer from his
15 country. And I just wanted to at least be assured that he has
16 received that ability to speak to a consulate official. Very
17 well.

18 MR. CIVILLE: He did, Your Honor.

19 THE COURT: Okay. Without asking the defendant
20 to state his name, because I know that -- that he is not
21 conceding to his identity or any other identifying information
22 at this time, I want to make sure I advise the defendant of
23 his general rights. Does he understand the nature of the
24 charge as contained in the superseding indictment? Charges.

25 THE DEFENDANT: Yes, I do.

1 THE COURT: Okay. Very well. Do you waive a
2 reading of all of those charges?

3 INTERPRETER: I'm sorry?

4 THE COURT: Does he waive a reading of the
5 charges? In other words, I don't have -- does he want me to
6 read every charge or does he waive a reading?

7 MR. CIVILLE: Your Honor...

8 (Counsel consulting with client and translator.)

9 THE DEFENDANT: Okay. It's okay. I read.

10 THE COURT: It's okay? You waive a reading?

11 MR. CIVILLE: Yes, Your Honor.

12 THE DEFENDANT: Yes.

13 MR. CIVILLE: Yes, he waives reading.

14 THE COURT: Very well. And as you know, you've
15 been advised previously before Judge Manibusan of your right
16 to a lawyer. You do have your attorney present here and also
17 from, I believe, New York. It's like four in the morning. I
18 apologize for that early morning, Mr. Goldin. You understand
19 that? You have your rights and you've been exercising your
20 right to your lawyers?

21 THE DEFENDANT: Yes, I do.

22 THE COURT: Okay. You also have the right to
23 remain silent. Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: Okay. Very well. And the Court is

1 going to also advise you that you also have a right to waive
2 the removal hearing. But you obviously are not waiving that,
3 and you're obviously not voluntarily returning to the District
4 of Washington, where the charges are pending. But you
5 understand that you do have that right; correct?

6 INTERPRETER: Sorry. Please repeat the last
7 sentence.

8 THE COURT: Right. You understand that you do
9 have those rights? You have the right to -- you waive the
10 removal hearing, which you have not done, and you have the
11 right to voluntarily return to -- voluntarily go to Washington
12 state, where the charges are pending?

13 INTERPRETER: He understands.

14 THE COURT: He understands. Okay. Very well.

15 He also understands that we are going through an
16 identity hearing and he has a right to waive that hearing?
17 But as I understand it, he's not doing that. Is that correct?

18 THE DEFENDANT: Okay. I understand.

19 THE COURT: Okay. Very well.

20 And, also, the Court has to advise you that you
21 have the right under Federal Rule Criminal Procedure 20 to
22 plead guilty or no contest in this district if both the United
23 States attorneys consent. Do you understand that?

24 THE DEFENDANT: I understand.

25 THE COURT: He understands. Okay. Very well.

1 The Court having advised you of those rights, do
2 you have any questions about any of them?

3 INTERPRETER: He doesn't have questions.

4 THE COURT: Very well.

5 All right. The Court has heard the evidence as
6 to whether or not this defendant is the person named in the
7 indictment, the person who's been arrested in the -- the
8 person who's before the Court and who has been arrested is the
9 person named in the superseding indictment issued by the grand
10 jury in the State of Washington, the Western District in
11 Seattle, Criminal Case 117ORAJ, and it indicates *United States*
12 *of America v. Roman Seleznev* and then several aliases or
13 a/k/a's. The two in particular which the United States
14 Attorneys' Office have zeroed in on are a/k/a track2 and a/k/a
15 Ruben Samvilech or Samvilech, according to the testimony.

16 The Court notes that after having considered all
17 the exhibits that have been admitted and the testimony that
18 has been presented, the Court finds that the United States
19 Attorneys' Office have met its burden of proof regarding
20 whether or not there's probable cause to believe that the
21 person arrested is the person named in the charging
22 instrument. The Court has considered, No. 1, the arrest
23 warrant, along with the INTERPOL notice, Red Notice, and the
24 superseding indictment, along with the forensic investigation
25 results. In particular, the Court notes the -- with regard to

1 the forensic investigation results submitted today by the
2 second agent, the Court notes that the name of the city --
3 Vladivostok city, the address, Ostryakova Street, Building 26,
4 wing Apartment 13; the two alias names, track2 and Ruben
5 Samvilech -- Samvilech -- Samvilech, the e-mail addresses
6 rubensamvilech@yahoo.com; and the names -- the name -- even
7 though the name Alexey Davydov -- Davydov, I'm sorry if I'm
8 not saying the names correctly -- was noted as the registrant.
9 The -- on Exhibit 9.

10 The Court notes on Exhibit 10-B, according to the
11 PayPal search warrant records, it does indicate the name of
12 Roman Seleznev, which is the name noted in the grand jury
13 indictment. Also, the Court notes under 12-B and 5-B-5 and
14 5-B-6 the names S-V-E-T-L-A-N Selezneva, S-E-L-E-Z-N-A --
15 N-E-V-A, and Eva or Eva Selezneva, S-E-L-E-Z-N-E-V-A, are
16 contained in the 5-B-5 and 5-B-6 internal -- I believe it's
17 been testified to as an internal passport of Russia, as
18 opposed to the international passport or the foreign passport,
19 and those names are contained therein. And those -- that
20 particular internal passport, if you will, or -- comes from
21 the bag that the person who was arrested was carrying in the
22 Maldives. And the first agent who testified, Agent Dan
23 Schwandner, had looked at, as well.

24 The Court also notes that the addresses -- the
25 address I've already indicated contained in Exhibit 5, 10-A --

1 are also contained in Exhibit 10-A and 10-B. The Court notes
2 that. And then, also, the travel information contained in the
3 forensic investigation of Roman Seleznev traveling to
4 Singapore, that particular information has matched up to the
5 Exhibit 4-A, which is the foreign Russian passport, insofar as
6 the date and the name of Roman Seleznev.

7 In addition, the Court notes that the identifying
8 features contained in the INTERPOL Red Notice states that the
9 person before the Court has a mole below his left eye, which
10 was noted by the Agent Schwandner. And Agent Schwandner
11 testified in court that he compared the photo of the defendant
12 -- I'm sorry, the person before the Court or the defendant --
13 that's right. He compared the photo of that person with
14 Exhibit 3 and also with Exhibit 4 and 5, the foreign passport
15 and the internal passport. And he also conducted an in-court
16 identification of Roman Seleznev as being the same person in
17 the INTERPOL Red Notice and the two passports and the person
18 he believed to be the person who was taken into custody. The
19 issue of custody can be debated with the trial court, but
20 taken into custody, whether it's by the Maldives authority
21 and/or the U.S. Secret Service at Male Maldives, to be that
22 same person. And, also, the name of Roman Seleznev was --
23 matches the name as contained in the indictment, as well as
24 the passport, as well as in the INTERPOL notice, including the
25 a/k/a Ruben Samvilech in the Red Notice is also contained here

1 in the indictment and the Red Notice, as I've indicated.

2 In addition, the Court has considered the
3 testimony of Agent Schwandner when he indicated that he asked
4 the person who was arrested in -- arrested and who's now
5 before the Court what his name was, and that person identified
6 himself as Roman Seleznev, whose name is consistent with the
7 name contained in the superseding indictment under -- pursuant
8 to Exhibit 2.

9 In addition, the passport number -- the passport
10 number -- in particular, the Court notes passport number as
11 contained in Exhibit 4-B -- I'm sorry. Strike that. 4-A --
12 the passport number as contained in 4 as well as -- hold on
13 one second.

14 (Pause.)

15 Okay. Passport number as contained in 4-A-5,
16 640410831, is the same Russian passport number stated
17 belonging to Roman Seleznev in Exhibit 3-2, which is the
18 INTERPOL Red Notice. And... okay. The Court also notes that
19 the agent -- the first agent identified -- that first agent,
20 Dan Schwandner, in-court identification also includes the
21 identification of the defendant in person not just by his
22 mole, but his -- by what he was wearing, the shirt that he was
23 wearing and the jacket that he was wearing. The Court takes
24 notice of that with regard to the in-court identification.

25 And then with regard to the departure card,

1 Exhibit 6, the Court has also taken into consideration the
2 date of arrival as testified to by the first agent, even
3 though it says the departure card. The Court notes that on
4 Exhibit 6 in particular, it does state that -- if you look at
5 the stamp, it does state June 21, 2014, and then there's a
6 check indicating permitted to stay at the Male International
7 Airport, it's the Maldives immigration stamp noted. So the
8 Court does note that as well.

9 Then these exhibits that I've -- that the agent,
10 Dan Schwandner, had testified to, he's indicated all came from
11 the bag that the defendant had in his possession and in which
12 he was able to look through and match up all of this evidence
13 with regard to identification.

14 Okay. So, therefore -- let me see if I have
15 anything else. Therefore, the Court, as I've indicated,
16 believes that the United States Attorneys' Office have met its
17 burden of proof to show there's probable cause that the person
18 arrested is the person named in the charging indictment, that
19 person being Roman Seleznev. And the Court will order that
20 the defendant will be held and transferred, and I will
21 transmit the papers to the clerk of the charging district.
22 The Court also will issue a decision on the personal
23 jurisdiction matter that I ruled upon earlier today, and that
24 will come out probably in a few days. That will take me a few
25 days to issue that out.

1 Okay. Any questions, Mr. Civile?

2 MR. CIVILLE: No, Your Honor.

3 THE COURT: Okay. Your client have any issues?

4 MR. CIVILLE: Your Honor, I would like to -- and
5 not take a picture of the courtroom, just for our files, I'd
6 like to take a picture of Mr. Seleznev for our investigative
7 purposes. Then I'll just face him to the back so it's not
8 showing any of the courtroom.

9 THE COURT: Okay. That's fine. You can do that
10 like right at end of the hearing. That's fine. You have a
11 camera?

12 MR. CIVILLE: Yes, Your Honor.

13 THE COURT: All right. Okay. Thank you,
14 Mr. Walsh.

15 All right. Anything further, Ms. David?

16 MS. DAVID: No, Your Honor. Thank you.

17 THE COURT: All right. Do you have a proposed
18 order on the removal?

19 MS. DAVID: I will have my office submit a copy
20 to chambers.

21 THE COURT: Oh. You do have -- you already have
22 one? Did you submit an original?

23 MS. DAVID: We typically submit usually around
24 the first initial appearance before the magistrate.

25 THE COURT: Oh, okay. Let me see. I don't know

1 if you did. You do think you submitted that?

2 MS. DAVID: I believe we may have.

3 THE COURT: I'm sorry. Let me see. That was
4 before Judge Manibusan, you submitted it?

5 MS. DAVID: Yes, Your Honor.

6 THE COURT: Okay. That was assuming, I think,
7 that he waived identity.

8 MS. DAVID: We will prepare one.

9 THE COURT: Okay.

10 MS. DAVID: And send it to chambers for tomorrow
11 morning, if that's okay.

12 THE COURT: Okay. That's fine. I'll review it
13 then.

14 MS. DAVID: Thank you, Your Honor.

15 THE COURT: Yes, Mr. Civile?

16 MR. CIVILLE: Your Honor, I realize they're
17 always hesitant to give an exact date for security reasons, so
18 I'm not asking for an exact date, but I would like to alert
19 the defense team back in the mainland. May we inquire -- will
20 he be transported -- I know there's some Secret Service agents
21 out here. I don't know if they're going back that way and
22 will take him or he'd be going on the regular U.S. Marshal
23 transport that sometimes takes several weeks to get through.
24 So I'm just curious --

25 THE COURT: You just want to get an idea, is it

1 gonna take several weeks or several hours? Several days?

2 MR. CIVILLE: Yeah. Is he on an expedited track
3 or is he going back with the -- as prisoners --

4 THE COURT: Agent?

5 MR. FISCHLIN: Your Honor, I would default to the
6 U.S. marshals.

7 THE COURT: Okay, so it's going to be the U.S.
8 Marshals to do the transport, not the Secret Service? Am I --

9 MS. DAVID: That is correct, Your Honor.

10 THE COURT: Am I remanding him to the custody of
11 the U.S. Marshals, then?

12 MS. DAVID: Yes, Your Honor.

13 THE COURT: Not to the U.S. Secret Service.

14 MS. DAVID: That's correct.

15 THE COURT: I will -- okay, so I'm remanding him
16 to the custody of U.S. Marshals. I know that our U.S.
17 Marshals have always indicated to me that because it's a top
18 security issue, they have to work that out. But what I'll do
19 is have them -- have them coordinate that with you. You will
20 know. How's that?

21 MR. CIVILLE: Okay. Thank you, Your Honor.

22 THE COURT: Just so -- for purposes of -- of
23 what?

24 MR. CIVILLE: So I can alert the defense team
25 back in the -- on the mainland when -- approximately when

1 he'll be back. I'm not asking for the flight number or the
2 day of departure, but, you know, something within a few-day
3 range would be helpful.

4 THE COURT: Well, first of all, I'll have to get
5 the removal order also. That's going to be first and
6 foremost. And then -- then the personal jurisdiction order
7 can follow after that. We'll probably get that next week. So
8 -- yes, Mr. Walsh?

9 MR. WALSH: I was just going to add one other
10 reason, Your Honor, is because the defendant doesn't have any
11 family or relatives around, so in terms of clothing and/or
12 providing him with quarters while he's in confinement, those
13 sort of little practical matters of being a detainee while
14 confined, information in terms of how long we would be helping
15 him, that would be useful. That's the only thing I wanted to
16 add.

17 THE COURT: Well, you know, we do have clothing
18 downstairs, too, with Probation. Men's clothing.

19 Grace, do we still have men's clothing about this
20 size of this defendant if it's necessary?

21 MS. FLORES: We do have large clothing. It's
22 usually for women. But regarding his size, I'm not absolutely
23 sure. But there is clothing available if necessary.

24 THE COURT: Okay, well, we can -- Mr. Walsh and
25 Mr. Civile, with regard to clothing for Mr. Seleznev, the

1 Court can make sure there's arrangements for him. I mean,
2 we've done that. We've had to do that with some of the
3 defendants who don't have clothing. So we can get that for
4 him, especially warmer clothing if he needs that, especially
5 on the plane. And that will be cleared with U.S. Probation,
6 something that we have with one of our probation officers.
7 Would you like that, Mr. Walsh?

8 MR. WALSH: Yes. Thank you, Judge. Just a
9 practical consideration.

10 MR. CIVILLE: Thank you, Your Honor.

11 THE COURT: Okay. Very well. So we'll
12 coordinate that. I'll have Ms. Flores, our chief probation
13 officer, assist Mr. Civile in getting the defendant some
14 clothing. Can you let him know that?

15 INTERPRETER: Yeah.

16 THE COURT: Yeah, if you can let him know that.
17 We'll make sure he gets that.

18 All right. Anything further, Counsels?

19 MR. CIVILLE: No, Your Honor.

20 THE COURT: Okay. There being nothing further,
21 thank you very much.

22 MR. CIVILLE: Thank you, Your Honor.

23 THE COURT: Okay. Have a nice day.

24 MR. RAY: Thank you, Your Honor.

25 THE COURT: Yeah, thank you.

1 MR. GOLDIN: Bye-bye, Your Honor. Thanks.

2 THE COURT: Yeah, thank you, both of you.

3 Appreciate your time.

4 THE CLERK: Court's adjourned.

5 (Proceedings concluded at 6:32 p.m.)

6 -----

7 CERTIFICATE OF OFFICIAL REPORTER

8

9 CITY OF HAGATNA)
10 TERRITORY OF GUAM) ss.
11)

12 I, Veronica F. Reilly, Federal Official Court
13 Reporter for the United States District Court of Guam, do
14 hereby certify the foregoing pages, 1 to 207, to be a true and
15 correct transcript of the stenographically-reported
16 proceedings held in the above-entitled matter.

17 Dated this 29th day of August, 2014.

18

19 /s/Veronica F. Reilly
20 Veronica F. Reilly, CSR NO. 2004
21 Federal Official Court Reporter
22
23
24
25

EXHIBIT 7

No. 051

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs of the Republic of Maldives and has the honor to request the removal of Russian citizen ROMAN VALEREVICH SELEZNEV, alias "Roman Ivanov," alias "Ruben Samvelich," alias "Track2," alias "nCuX," alias "Bulba," alias "bandysli64," alias "smaus," alias "zagreb," alias "shmak," to the United States by way of deportation, expulsion, or other means available under the laws of the Maldives.

In addition to the above assistance, the United States requests the seizure of all articles in the possession of the fugitive that may serve as evidence of the offenses, for surrender with the fugitive if he is transferred to U.S. custody.

ROMAN VALEREVICH SELEZNEV ("SELEZNEV"), is believed to be planning to depart the Maldives on the morning of July 5, 2014. Therefore, the Embassy considers this request to be urgent.

SELEZNEV is wanted to stand trial in the United States District Court for the Western District of Washington for bank fraud, damage to computers, illegally obtaining information from computers, illegal possession of credit card information, trafficking in credit cards, and identity theft. On March 16, 2011, Superseding Indictment Number CR11-070RAJ was filed in the U.S. District Court for the Western District of Washington, charging SELEZNEV with the following offenses:

- Five counts (Counts 1 – 5) of bank fraud, in violation of Title 18, United States Code (U.S.C.), §§ 1344 and 2, with a maximum penalty of thirty years' imprisonment for each count;

DIPLOMATIC NOTE

- Eight counts (Counts 6 – 13) of intentional damage to a protected computer, in violation of 18 U.S.C. §§ 1030(a)(5)(A), 1030(c)(4)(B)(I), and 2, with a maximum penalty of ten years' imprisonment for each count;
- Eight counts (Counts 14 – 21) of obtaining information from a protected computer, in violation of 18 U.S.C. §§ 1030(a)(2), 1030(c)(2)(B)(ii), and 2, with a maximum penalty of five years' imprisonment for each count;
- One count (Count 22) of possession of fifteen or more unauthorized access devices (credit cards), in violation of 18 U.S.C. §§ 1029(a)(3), 1029(c)(1)(A)(i), and 2, with a maximum penalty of ten years' imprisonment;
- Two counts (Counts 23 and 24) of trafficking in unauthorized access devices, in violation of 18 U.S.C. §§ 1029(a)(2), 1029(c)(1)(A)(i), and 2, with a maximum penalty of ten years' imprisonment for each count; and,
- Five Counts (Counts 25 – 29) of aggravated identity theft, in violation of 18 U.S.C. §§ 1028A(a)(1) and 2, with a maximum penalty of two years' imprisonment for each count.

The applicable statute of limitation does not bar prosecution for the offenses charged.

On March 16, 2011, a warrant for the arrest of SELEZNEV was issued by the United States District Court for the Western District of Washington based on the charges in the superseding indictment. This arrest warrant remains valid and executable to apprehend SELEZNEV for the charges filed in the superseding indictment. The indictment and the arrest warrant are attached.

The court has authorized the Indictment and warrant of arrest to be unsealed for the limited purpose of allowing the United States to provide copies of these documents to any foreign officials necessary to effectuate the arrest and transfer of SELEZNEV to the United States, but they will remain sealed until the apprehension of SELEZNEV.

The facts of the case are as follows:

The U.S. Secret Service (USSS) has been investigating the internet nickname of "Track2" since May 2010. During the investigation, it was determined that the nickname belongs to SELEZNEV and that he is responsible for network intrusions or computer hacks at over 100 businesses. It has also been determined that he is responsible for the sale of hundreds of thousands of stolen credit card numbers.

The first network intrusion investigated by the USSS was at Schlotszki's Deli in Coeur D'Alene, Idaho. On May 17, 2010, computers belonging to the business were imaged and it was determined that malicious computer software had been installed on the computers of the business since early April 2010 and that stolen credit card numbers were being transmitted to a server in Russia. During the investigation, it was also determined that the server where the data was being sent was the same server that was hosting or storing all of the variations of the malicious software.

In June 2010, a suspect was arrested in Ohio who was in possession of credit card numbers stolen from the Coeur D'Alene, Idaho, network intrusion. A forensic examination of the suspect's computer revealed that he had communicated online with SELEZNEV via a chat program and had purchased the credit card numbers from a website belonging to SELEZNEV.

Between April 2010 and March 2011, SELEZNEV hacked multiple businesses in at least five different states including Washington, Maryland, Arizona, Illinois, and New York. Numerous court orders and warrants have been served as part of this case. These court orders have included search warrants for email accounts, computer servers, and

business records from various providers. The cumulative information from these records and searches have positively identified SELEZNEV as the computer hacker behind the aforementioned network intrusions, as well as being the person responsible for the marketing and sale of hundreds of thousands of stolen credit card numbers stolen from the victim businesses.

The most recent fraud loss numbers obtained in this case show that there has been a confirmed actual loss of over US\$ 1.9 million. This number is expected to rise significantly as the investigation continues.

SELEZNEV is a citizen of the Russian Federation born on July 23, 1984, in the Russian Federation. He is described as a Caucasian male, approximately 5 feet 10 inches tall, weighing approximately 190 pounds, with brown hair and brown colored eyes. He has a mole below his left eye. Photographs of SELEZNEV are included with this request. SELEZNEV's Russian Federation passport number is 640410831 issued on or about December 31, 2009. In 2007 and 2008, SELEZNEV traveled on a Russian Federation passport with a number of 623910597.

The United States will attempt to provide any further documentation required by authorities in the Maldives in a timely manner, including translations of documentation provided with this diplomatic note, if needed. If Maldivian authorities are willing to assist the United States Government in this matter, the United States Government has agents that are able to escort SELEZNEV to the United States.

While the United States would appreciate the assistance of the Maldives in returning SELEZNEV to the United States, because of limitations imposed by U.S. law, we would not be in a position to guarantee reciprocity in the event of the Maldives' interest in our similarly deporting or expelling someone to the Maldives.

The Embassy of the United States of America avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Republic of Maldives the assurances of its highest consideration.

Embassy of the United States of America,
Colombo, July 03, 2014.



EXHIBIT 8

From: [Lashinsky, Dennis M \(Colombo\)](#)
To: [Commissioner@police.gov.mv](#); [Rana Waheed \(rw_C1258@police.gov.mv\)](#)
Subject: Arrest Warrant for Fugitive in Maldives
Attachments: [image2014-02-11-021753.pdf](#)
[image2014-02-11-041308.pdf](#)

Commissioner Waheed,

Attached is the local arrest warrant from the United States Secret Service and the photos for the subject. Also attached is a copy of a Diplomatic Note. SA Mark Smith will arrive around 0815 tomorrow morning. I will follow-up with an email with flights details momentarily. If it is possible to send a an officer to meet him at the airport and arrange for the boat to take him from the HIH to MPS HQ that would be great. He will have all the additional details regarding the case upon his arrival. Thank you for everything. Good luck with the operation.

Regards,

Mike

D. Michael Lashinsky
Assistant Regional Security Officer
U.S. Embassy Colombo, Sri Lanka
Tel: (94-11) 249-8500 ext. 8756
Cell: 077-700-4070
IVG: 761-8756

SBU

This email is UNCLASSIFIED.

From: Hussain Waheed [mailto:h.waheed@police.gov.mv]
Sent: Thursday, July 03, 2014 12:34 PM
To: Lashinsky, Dennis M (Colombo)
Subject: RE: Expulsion Operation

Hello Mike,

It would be most helpful if Ambassador Sison could give AG Anil a call from your side as well.

Best

Hussain Waheed
Commissioner of Police
Maldives Police Service

Police Headquarters, Shaheed Hussain Adam Building, Henveiru, Boduthakurufaanu Magu, Male' 20125, Republic of Maldives

Tel: +960 3323588 | Mobile: +960 9998226 | Fax: +960 3346809 |

Email: commissioner@police.gov.mv / h.waheed@police.gov.mv

From: Lashinsky, Dennis M (Colombo) [LashinskyDM@state.gov]
Sent: Thursday, July 03, 2014 11:17 AM
To: commissioner
Cc: Rana Waheed
Subject: Expulsion Operation

Commissioner Waheed,

I would like to thank you for offering us your assistance in coordinating the expulsion of this high value fugitive. As I mentioned, the U.S. Secret Service has described the subject as the most notorious credit card trafficker today accessing over 1,000,000 accounts, and as a major player in cybercriminal activities.

This morning, I anticipated that all the documentation required to launch this operation would be in my inbox. However, it appears that due to the time difference, or what I would like to call the 8900 mile screwdriver, the release of this information is hung up back in Washington. It should come through this evening when DC reopens.

In addition, I have discussed the delay of this operation with Ambassador Sison. If you think it would help for her to notify the AG Anil, please let me know. We can pass him the same information that we gave to you to help facilitate the agency's request for removal/expulsion of the subject.

Sincerely,

Mike

D. Michael Lashinsky
Assistant Regional Security Officer
U.S. Embassy Colombo, Sri Lanka
Tel: (94-11) 249-8500 ext. 8756
Cell: 077-700-4070
IVG: 761-8756

SBU
This email is UNCLASSIFIED.

From: [DeHoag, Charles \(Colombo\)](#)
To: protocol@foreign.gov.mv
Cc: [Ross, Robert K \(Colombo\)](#); [Anderson, Jason \(Colombo\)](#); [Fallon, Sokhoeun N](#); [Lashinsky, Dennis M \(Colombo\)](#); [Hulsman, Raymond J \(Colombo\)](#)
Subject: URGENT: Request Landing for US Flight
Date: Friday, July 04, 2014 2:30:40 AM
Attachments: [057-14 DAO \(Landing VJT 510\).pdf](#)

Protocol,

Ramazan Mubarak! I must apologize in advance for such very late notice. Please see the attached request for landing/overflight. This aircraft mission acting in close cooperation and coordination with the Maldives Police Service. Please contact the Honorable Rana Waheed with additional questions.

All of those cc'd can also address any concerns. We will reach out to you telephonically as well, due to the urgency of the matter, at 9607990993 and 9603304128. Please advise if there are better or preferred numbers.

Again, my sincerest thanks in advance for your assistance. All the best to you and yours in this Holy Month.

v/r
Chuck

Charles A. DeHoag, GS-14

Deputy Defense Attache

USDAO Colombo, Sri Lanka

United States Embassy, Sri Lanka

and the Maldives

210 Galle Road, Colombo 3

Comm: 94-11-249-8577

Fax: 94-11-249-8675

Mobile: 94-077-7709-583

SBU

This email is UNCLASSIFIED.

From: [Smith, Mark J \(Colombo\)](#)
To: [Lashinsky, Dennis M \(Colombo\)](#)
Subject: Re: Final Op Plan - USSS
Date: Friday, July 04, 2014 3:56:06 AM

We're waiting on the judge to issue the court order/warrant

From: Lashinsky, Dennis M (Colombo)
Sent: Friday, July 04, 2014 04:13 PM Sri Lanka Standard Time
To: DAVID IACOVETTI (HNL) <David.Iacovetti@usss.dhs.gov>; JOHN SZYDLIK (CID) <John.Szydlik@usss.dhs.gov>; JOHN TANI JR (HNL) <John.Tani@usss.dhs.gov>; Smith, Mark J (Colombo); Hayes, Blake D; DANIEL SCHWANDNER (BAN) <dschwandner@usss.dhs.gov>; Hulsman, Raymond J (Colombo)
Cc: Robrahn, Daniel W; Caniglia, Nicholas D; ANGELO ANGELOPULOS (CID) <angelo.angelopulos@usss.dhs.gov>; ARI BARANOFF (CID) <ari.baranoff@usss.dhs.gov>; 'Luke.Dembosky@usdoj.gov' <Luke.Dembosky@usdoj.gov>; 'Christine.Chen@usdoj.gov' <Christine.Chen@usdoj.gov>; 'Jeffrey.Olson@usdoj.gov' <Jeffrey.Olson@usdoj.gov>; 'Michael.Dick2@usdoj.gov' <Michael.Dick2@usdoj.gov>; 'Norman.Barbosa@usdoj.gov' <Norman.Barbosa@usdoj.gov>; MICHAEL FISCHLIN (SEA) <michael.fischlin@usss.dhs.gov>; JOHN MARENGO (CID) <john.marengo@usss.dhs.gov>; RICHARD LATULIP (CID) <richard.latulip@usss.dhs.gov>; DMITRIY BUKIN (LAX) <Dmitriy.Bukin@usss.dhs.gov>; SCOT LAM (LAX) <scot.lam@usss.dhs.gov>; LOREN CRUZADA (HNL) <loren.cruzada@usss.dhs.gov>; JOHN KEAVENEY (HNL) <john.keaveney@usss.dhs.gov>; EDWARD LOWERY III (CID) <Edward.Lowery@usss.dhs.gov>; JONATHAN BARTLETT (INV) <Mark.Bartlett@usss.dhs.gov>; FREDERICK SELLERS (INV) <frederick.sellers@usss.dhs.gov>; (U) Yi, Sung H (Bangkok)
Subject: Re: Final Op Plan - USSS

From: DAVID IACOVETTI (HNL)
Sent: Friday, July 4, 2014 3:21 PM
To: JOHN SZYDLIK (CID); JOHN TANI JR (HNL); Smith, Mark J (Colombo); Hayes, Blake D; DANIEL SCHWANDNER (BAN); Lashinsky, Dennis M (Colombo); Hulsman, Raymond J (Colombo)
Cc: Robrahn, Daniel W; Caniglia, Nicholas D; ANGELO ANGELOPULOS (CID); ARI BARANOFF (CID); 'Luke.Dembosky@usdoj.gov'; 'Christine.Chen@usdoj.gov'; 'Jeffrey.Olson@usdoj.gov'; 'Michael.Dick2@usdoj.gov'; 'Norman.Barbosa@usdoj.gov'; MICHAEL FISCHLIN (SEA); JOHN MARENGO (CID); RICHARD LATULIP (CID); DMITRIY BUKIN (LAX); SCOT LAM (LAX); LOREN CRUZADA (HNL); JOHN KEAVENEY (HNL); EDWARD LOWERY III (CID); JONATHAN BARTLETT (INV); FREDERICK SELLERS (INV); (U) Yi, Sung H (Bangkok)
Subject: Re: Final Op Plan - USSS

From: JOHN SZYDLIK (CID)
Sent: Friday, July 04, 2014 04:13 AM
To: JOHN TANI JR (HNL); 'SmithMJ1@state.gov' <SmithMJ1@state.gov>; 'HayesB2@state.gov' <HayesB2@state.gov>; DANIEL SCHWANDNER (BAN); 'LashinskyDM@state.gov' <LashinskyDM@state.gov>; 'HulsmanRJ@state.gov' <HulsmanRJ@state.gov>
Cc: 'RobrahnDW2@state.gov' <RobrahnDW2@state.gov>; 'CanigliaND@state.gov'

<CanigliaND@state.gov>; ANGELO ANGELOPULOS (CID); ARI BARANOFF (CID); 'Dembosky, Luke'
<Luke.Dembosky@usdoj.gov>; 'Chen, Christine' <Christine.Chen@usdoj.gov>; 'Olson, Jeffrey'
<Jeffrey.Olson@usdoj.gov>; 'Dick, Michael' <Michael.Dick2@usdoj.gov>; 'Barbosa, Norman (USAWAW)'
<Norman.Barbosa@usdoj.gov>; MICHAEL FISCHLIN (SEA); JOHN MARENGO (CID); RICHARD LATULIP
(CID); DAVID IACOVETTI (HNL); DMITRIY BUKIN (LAX); SCOT LAM (LAX); LOREN CRUZADA (HNL);
JOHN KEAVENEY (HNL)
Subject: Final Op Plan - USSS

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From: [Smith, Mark J \(Colombo\)](#)
To: [Lashinsky, Dennis M \(Colombo\)](#)
Subject: Re: Final Op Plan - USSS
Date: Friday, July 04, 2014 8:03:44 AM

Being told the warrant will be done at 9

From: Lashinsky, Dennis M (Colombo)
Sent: Friday, July 04, 2014 04:13 PM Sri Lanka Standard Time
To: DAVID IACOVETTI (HNL) <David.Iacovetti@uss.s.dhs.gov>; JOHN SZYDLIK (CID) <John.Szydlik@uss.s.dhs.gov>; JOHN TANI JR (HNL) <John.Tani@uss.s.dhs.gov>; Smith, Mark J (Colombo); Hayes, Blake D; DANIEL SCHWANDNER (BAN) <dschwandner@uss.s.dhs.gov>; Hulsman, Raymond J (Colombo)
Cc: Robrahn, Daniel W; Caniglia, Nicholas D; ANGELO ANGELOPULOS (CID) <angelo.angelopulos@uss.s.dhs.gov>; ARI BARANOFF (CID) <ari.baranoff@uss.s.dhs.gov>; 'Luke.Dembosky@usdoj.gov' <Luke.Dembosky@usdoj.gov>; 'Christine.Chen@usdoj.gov' <Christine.Chen@usdoj.gov>; 'Jeffrey.Olson@usdoj.gov' <Jeffrey.Olson@usdoj.gov>; 'Michael.Dick2@usdoj.gov' <Michael.Dick2@usdoj.gov>; 'Norman.Barbosa@usdoj.gov' <Norman.Barbosa@usdoj.gov>; MICHAEL FISCHLIN (SEA) <michael.fischlin@uss.s.dhs.gov>; JOHN MARENGO (CID) <john.marengo@uss.s.dhs.gov>; RICHARD LATULIP (CID) <richard.latulip@uss.s.dhs.gov>; DMITRIY BUKIN (LAX) <Dmitriy.Bukin@uss.s.dhs.gov>; SCOT LAM (LAX) <scot.lam@uss.s.dhs.gov>; LOREN CRUZADA (HNL) <loren.cruzada@uss.s.dhs.gov>; JOHN KEAVENEY (HNL) <john.keaveney@uss.s.dhs.gov>; EDWARD LOWERY III (CID) <Edward.Lowery@uss.s.dhs.gov>; JONATHAN BARTLETT (INV) <Mark.Bartlett@uss.s.dhs.gov>; FREDERICK SELLERS (INV) <frederick.sellers@uss.s.dhs.gov>; (U) Yi, Sung H (Bangkok)
Subject: Re: Final Op Plan - USSS

From: DAVID IACOVETTI (HNL)
Sent: Friday, July 4, 2014 3:21 PM
To: JOHN SZYDLIK (CID); JOHN TANI JR (HNL); Smith, Mark J (Colombo); Hayes, Blake D; DANIEL SCHWANDNER (BAN); Lashinsky, Dennis M (Colombo); Hulsman, Raymond J (Colombo)
Cc: Robrahn, Daniel W; Caniglia, Nicholas D; ANGELO ANGELOPULOS (CID); ARI BARANOFF (CID); 'Luke.Dembosky@usdoj.gov'; 'Christine.Chen@usdoj.gov'; 'Jeffrey.Olson@usdoj.gov'; 'Michael.Dick2@usdoj.gov'; 'Norman.Barbosa@usdoj.gov'; MICHAEL FISCHLIN (SEA); JOHN MARENGO (CID); RICHARD LATULIP (CID); DMITRIY BUKIN (LAX); SCOT LAM (LAX); LOREN CRUZADA (HNL); JOHN KEAVENEY (HNL); EDWARD LOWERY III (CID); JONATHAN BARTLETT (INV); FREDERICK SELLERS (INV); (U) Yi, Sung H (Bangkok)
Subject: Re: Final Op Plan - USSS

From: JOHN SZYDLIK (CID)
Sent: Friday, July 04, 2014 04:13 AM
To: JOHN TANI JR (HNL); 'SmithMJ1@state.gov' <SmithMJ1@state.gov>; 'HayesB2@state.gov' <HayesB2@state.gov>; DANIEL SCHWANDNER (BAN); 'LashinskyDM@state.gov' <LashinskyDM@state.gov>; 'HulsmanRJ@state.gov' <HulsmanRJ@state.gov>
Cc: 'RobrahnDW2@state.gov' <RobrahnDW2@state.gov>; 'CanigliaND@state.gov'

<CanigliaND@state.gov>; ANGELO ANGELOPULOS (CID); ARI BARANOFF (CID); 'Dembosky, Luke'
<Luke.Dembosky@usdoj.gov>; 'Chen, Christine' <Christine.Chen@usdoj.gov>; 'Olson, Jeffrey'
<Jeffrey.Olson@usdoj.gov>; 'Dick, Michael' <Michael.Dick2@usdoj.gov>; 'Barbosa, Norman (USAWAW)'
<Norman.Barbosa@usdoj.gov>; MICHAEL FISCHLIN (SEA); JOHN MARENGO (CID); RICHARD LATULIP
(CID); DAVID IACOVETTI (HNL); DMITRIY BUKIN (LAX); SCOT LAM (LAX); LOREN CRUZADA (HNL);
JOHN KEAVENEY (HNL)

Subject: Final Op Plan - USSS

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From: [Smith, Mark J \(Colombo\)](#)
To: ["hussainusham@gmail.com"](mailto:hussainusham@gmail.com)
Subject: seleznev.jpg
Date: Friday, July 04, 2014 8:34:20 PM
Attachments: [seleznev.jpg](#)

From: [Abdulla Rasheed](#)
To: [Dehoag, Charles \(Colombo\); badoora@foreign.gov.mv](#)
Cc: [Ross, Robert K \(Colombo\); Anderson, Jason \(Colombo\); Fallon, Sokhoeun N; Lashinsky, Dennis M \(Colombo\); Hulsman, Raymond J \(Colombo\); rw_C1258@police.gov.mv](#)
Subject: Diplomatic Clearance Issued
Date: Tuesday, July 08, 2014 10:55:59 AM
Attachments: [Diplomatic Clearance Issued.pdf](#)

Dear Chuck,

Please find attached here with the Ministry letter number (D2) EA-US/B/2014/28 dated 4 July 2014. Regarding the issued of the Diplomatic clearance of US aircraft , Bombardier Global 5000/ VJT 510 to overfly Maldivian airspace and land at Male International Airport.

Regards
Rasheed

Abdulla Rasheed
Protocol Department
Ministry of Foreign Affairs
Republic of Maldives
T (960)3304138
M (960) 741 1975
F (960) 3329178

Ministry of Foreign Affairs, Male' 20077, Republic of Maldives
Direct: +960 3301437| Tel: [+960 3323400](#) | Fax: +960 3329178 Web:
[www.foreign.gov.mv](#)

_____ Information from ESET NOD32 Antivirus, version of virus signature database 3948 (20090319) _____

The message was checked by ESET NOD32 Antivirus.

<http://www.eset.com>

From: [Dehoag, Charles \(Colombo\)](#)
To: ["protocol@foreign.gov.mv"](#); ["badoora@foreign.gov.mv"](#)
Cc: [Ross, Robert K \(Colombo\)](#); [Anderson, Jason \(Colombo\)](#); [Fallon, Sokhoeun N](#); [Lashinsky, Dennis M \(Colombo\)](#); [Hulsman, Raymond J \(Colombo\)](#); ["rw_C1258@police.gov.mv"](#)
Subject: Re: Diplomatic Clearance Issued
Date: Tuesday, July 08, 2014 7:00:54 PM

Thank you, Rasheed!

Best,
Chuck

From: Abdulla Rasheed [<mailto:protocol@foreign.gov.mv>]
Sent: Tuesday, July 08, 2014 11:14 PM Sri Lanka Standard Time
To: Dehoag, Charles (Colombo); badoora@foreign.gov.mv <badoora@foreign.gov.mv>
Cc: Ross, Robert K (Colombo); Anderson, Jason (Colombo); Fallon, Sokhoeun N; Lashinsky, Dennis M (Colombo); Hulsman, Raymond J (Colombo); rw_C1258@police.gov.mv <rw_C1258@police.gov.mv>
Subject: Diplomatic Clearance Issued

Dear Chuck,

Please find attached here with the Ministry letter number (D2) EA-US/B/2014/28 dated 4 July 2014. Regarding the issued of the Diplomatic clearance of US aircraft , Bombardier Global 5000/ VJT 510 to overfly Maldivian airspace and land at Male International Airport.

Regards
Rasheed

Abdulla Rasheed
Protocol Department
Ministry of Foreign Affairs
Republic of Maldives
T (960)3304138
M (960) 741 1975
F (960) 3329178

Ministry of Foreign Affairs, Male' 20077, Republic of Maldives
Direct: +960 3301437| Tel: [+960 3323400](tel:+9603323400) | Fax: +960 3329178 Web:
www.foreign.gov.mv

_____ Information from ESET NOD32 Antivirus, version of virus signature
database 3948 (20090319) _____

The message was checked by ESET NOD32 Antivirus.

<http://www.eset.com>

From: [Smith, Mark J \(Colombo\)](#)
To: ["hussainusham@gmail.com"](mailto:hussainusham@gmail.com)
Subject: list of names
Date: Monday, July 14, 2014 2:12:48 AM

Usham,

Sorry to bother but do you think you will be able to provide that list of names today. I need to try and get it to our Secret Service counterparts back in DC today.

Thanks so much.
Mark Smith
TDY ARSO-I
Ext 8790
BB 077-310-4201

This email is UNCLASSIFIED.

From: [Smith, Mark J \(Colombo\)](#)
To: ["Hussain Usham"](#)
Subject: RE: list of names
Date: Monday, July 14, 2014 3:14:37 AM

Usham,

I'll get in touch with Shuhad to get the list.

Many thanks
Mark

From: Hussain Usham [mailto:hussainusham@gmail.com]
Sent: Monday, July 14, 2014 3:31 PM
To: Smith, Mark J (Colombo)
Subject: Re: list of names

Since I'm not in a position to authorize to share the list, I request to contact ACP Areef or SP Shuhad for the list.

Regards,
USHAM

On Monday, July 14, 2014, Smith, Mark J (Colombo) <SmithMJ1@state.gov> wrote:
Usham,

Sorry to bother but do you think you will be able to provide that list of names today. I need to try and get it to our Secret Service counterparts back in DC today.

Thanks so much.
Mark Smith
TDY ARSO-I
Ext 8790
BB 077-310-4201

This email is UNCLASSIFIED.

This email is UNCLASSIFIED.

EXHIBIT 9

MICHAEL FISCHLIN (SEA)

From: HNL
Sent: Tuesday, July 08, 2014 6:34 PM
To: CID; SEA
Cc: GUA; cis; ISD; HKG; SYD; BAN; LAS; SPO; HNL
Subject: CT 771.110 Notification of Federal Arrest - Robert Seleznev (Guam)

U.S. Secret Service Investigative Report

FROM: GUAM RESIDENT OFFICE FILE: J-409-771-23434-S
TO : CRIMINAL INVESTIGATIVE DIVISION X-REF: 178-771-43719-S
SEATTLE FIELD OFFICE 410-775-09446-S
417-769-08288-S
202-768-22869-S
203-771-42801-S
404-771-20456-S
SEIZURE #: N/A

INFO: CYBER INTELLIGENCE SECTION
INVESTIGATIVE SUPPORT DIVISION
HONOLULU FIELD OFFICE
HONG KONG RESIDENT OFFICE
SYDNEY RESIDENT OFFICE
BANGKOK RESIDENT OFFICE
LAS VEGAS FIELD OFFICE
SPOKANE RESIDENT OFFICE

SUBJ: NOTIFICATION OF FEDERAL ARREST
ROMAN SELEZNEV - DATE OF ARREST 07/06/14

ACTUAL LOSS: \$6,300,000 POTENTIAL LOSS: \$100,000,000

CASE TITLE : BROADWAY GRILL
CASE TYPE : 771.110 - FRAUDULENT USE OF ACCOUNT NUMBERS -
BANK CARDS
SECONDARY TYPES : 775.610, 774.060, 775.120, 775.220, 775.230,
775.520, 725.110, 767.100, 767.120,
768.100, 769.110, 848.290, 848.920
848.930, 848.940, 848.950, 848.191
CONTROLLING OFFICE: SEATTLE FIELD OFFICE
REPORT MADE BY : SA DANIEL SCHWANDNER (BAN) +66 81 810-9333
DATE CASE OPENED : 11/01/10
PREVIOUS REPORT : REPORT OF INVESTIGATION BY SA MICHAEL FISCHLIN
DATED 5/23/14
REPORTING PERIOD : 7/6/14 - 7/7/14
STATUS : CONTINUED

SYNOPSIS:

At approximately 0252 HRS On 7/6/14, Russian National Roman Seleznev was arrested at the Guam International Airport by SA Dan Schwandner (BAN), and other Honolulu Field Office agents after arriving in Guam aboard a private charter flight from Male, Maldives.

The arrest was executed based on arrest warrant CR11-70 RAJ issued on 03/16/11, by the U.S. District Court, Western District of Washington.

There is an additional arrest warrant for this Defendant number 2:12-cr-004 issued on 01/10/12 by the U.S. District Court, District of Nevada.

On 7/8/14, I received an e-mail from SA John Szydlik, USSS Cyber Intelligence Section informing me that notification of Seleznev's arrest was sent via fax at 1627 HRS EST on 7/5/14 (0627 HRS on 7/6/14 Guam time) to the Russian Embassy in Washington, DC.

Details of Investigation:

Reference is made to the previous report in this case, dated 05/23/14, wherein SA Michael Fischlin, Seattle Field Office reported that this case was continued pending judicial action.

On 7/3/14, I received a call from ATSAIC John Marengo, USSS Cyber Intelligence Section providing me with information that Russian National Roman Seleznev, a U.S. Secret Service high value target was possibly vacationing in the Maldives.

Coordination had been on-going for several days between the U.S. Secret Service, the U.S. State Department to include the U.S. Embassy in Colombo, Sri Lanka and Maldivian authorities in order to confirm that Seleznev was in the Maldives and to determine the willingness of the Maldivian authorities to turn Seleznev over to United States law enforcement officials based on a red notice request from Interpol (Control No A-5063/7-2014) relating to the above mentioned arrest warrants.

On 7/3/14, I departed Bangkok at 0941 HRS and arrived in Male, Maldives at 1140 HRS.

On 7/4/14, I met with ARSOI Mark Smith, Diplomatic Security Service from the U.S. Embassy in Colombo, Sri Lanka regarding this matter. ARSOI Smith told me that based on his previous communications with Maldivian Law Enforcement authorities, there was a high probability they were willing to expel Seleznev from the Maldives and turn him over to U.S. law enforcement authorities on the aforementioned Interpol red notice.

Continuing on 7/4/14, SAIC Dave Iacovetti (HNL) arrived in Male, Maldives at approximately 1140 HRS. At 1430 HRS, SAIC Iacovetti, ARSOI Smith, and I met with Maldivian Police regarding this matter. At this meeting, it was confirmed by Maldivian Immigration records that Seleznev arrived in the Maldives on 6/21/14, and is believed to be staying at the Atmosphere Hotel, located on Kanifushi Island, about a 30 minute sea plane trip from the Male International Airport. It is also believed that he was scheduled to depart the Maldives on Saturday 7/5/14, at 1155 HRS via Transaero Flight UN510.

On the evening of 7/4/14, Maldivian authorities confirmed that Seleznev was scheduled to depart the Atmosphere resort via sea plane at approximately 0900 HRS on 7/5/14, en route to the Male International Airport.

At approximately 0830 on 7/5/14, it was confirmed by our Maldivian police counterparts that Seleznev would be expelled from the Maldives based on the aforementioned Interpol red notice and turned over to the custody of myself, SAIC Iacovetti and ARSOI Smith. We were further told this decision was made at the highest level of the Maldivian Government and received the approval of the President of the Maldives.

Continuing on 7/5/14, at approximately 1002 HRS, the Sea Plane carrying Seleznev, his girlfriend Ganna Otisko and her daughter Anastasia Otisko arrived at Male International airport. All three passengers boarded a shuttle bus en route to the Male International Airport terminal.

At approximately 1028 HRS, all three passengers approached the departure entrance to the Male International airport terminal, where they were approached and detained by Maldivian Tourist Police Officers, and asked to accompany police to the tourist police office inside the airport terminal.

At the police office, Maldivian Tourist Police directed Otisko and her daughter into a back office and asked Seleznev to sit down in the front office. Maldivian Police officials informed Seleznev that based on the issuance of the previously mentioned red notice from Interpol; he was being expelled from the Maldives and turned over to the custody of U.S. law enforcement officials. At this time, ARSOI Smith and I introduced ourselves and presented a copy of the indictment and the aforementioned arrest warrant from the U.S. District Court, Western District of Washington to Seleznev and informed him that he was going to be transported from Male to the United States to answer to the charges listed in the warrant.

Maldivian Tourist Police, assisted by myself and ARSOI Smith, searched through the bags that Seleznev and his party had brought to the airport with them. During this search, evidence to include electronic equipment, genuine U.S. currency, genuine Russian Rubles, miscellaneous travel documents, credit cards, and Seleznev's passports were seized by me, and later inventoried on the SSF 1544 forms listed below. All other items were left in the care of the Maldivian Tourist Police for release to Otisko.

At approximately 1051 HRS, SAIC Iacovetti, ARSOI Smith, Seleznev and I departed the Tourist Police office via foot escorted by Maldivian authorities to the VIP departure terminal. Upon arrival, we presented our documents to the Maldivian authorities to clear immigration. After clearing immigration, we were taken by vehicle and escorted by Maldivian authorities to our awaiting charter flight, and boarded the plane at 1105 HRS.

At approximately 1120 HRS on 7/5/14, SAIC Iacovetti, ARSOI Smith, myself and Seleznev departed Male, Maldives via charter aircraft en route to Guam.

JUDICIAL ACTION:

At 1400 HRS On 07/07/14, an initial appearance/identity hearing was held for Seleznev in Guam. During this time, the defendant refused to acknowledge the public defender, forcing the postponement of this hearing until 7/22/14, to allow the defendant to secure his own legal counsel.

Continuing on this date, I received an e-mail from SAIC Iacovetti, indicating correspondence with the U.S. Attorney's Office in Seattle that the New York law firm of Fox Rothschild LLP had been retained to represent Seleznev.

The U.S. Attorney's office in Guam has released the evidence seized from Seleznev at the time of his arrest to the Western District of Washington. This evidence will be delivered in person to the Seattle Field Office by SAIC Iacovetti.

SUSPECTS/DEFENDANTS:

SELEZNEV, ROMAN - DEFENDENT - ARRESTED (FEDERAL)

1599: YES (completed previously in SEA)

1599A: YES

EXAMS CONDUCTED:

None

DATABASE SEARCHES CONDUCTED:

NONE

EVIDENCE/CONTRABAND/PERSONAL PROPERTY:

Items seized from Seleznev and inventoried on SSF 1544 serial numbers 0001 DAI, 0002 DAI, 0003 DAI, 0004 DAI, 0005 DAI and 0006 DAI are being transported from Guam to the Seattle Field Office by SAIC Iacovetti.

All previously inventoried evidence is being held in the Seattle Field Office vault.

DISPOSITION:

Case continued in Guam pending results of federal judicial action.

HONOLULU FO

SCHWANDNER/JONES/IACOVETTI/cc

EXHIBIT 10

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Hussain Usham

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EXHIBIT 11

IN THE UNITED STATES DISTRICT COURT
FOR THE TERRITORY OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROMAN SELEZNEV,
aka TRACK2,
aka ROMAN IVANOV,
aka RUBEN SAMVELICH,
aka nCuX,
aka Bulba,
aka bandysli64,
aka smaus,
aka Zagreb,
aka shmak,

Defendant.

MAGISTRATE CASE NO. 14-00056

**DECLARATION OF
SHARAFULLA SHIHAB**

I, Sharafulla Shihab, being of full age and sound mind do hereby swear and affirm:

1. I am a citizen of the Republic of Maldives.
2. I work at a Hotel in the Maldives, and as part of my job, I meet guests upon their arrival and prior to their departure at the Maldives Ibrahim Nasir International Airport.
3. On July 5, 2014, I witnessed two United States agents detain and handcuff a person later identified by me from news reports as Roman Seleznev.
4. Mr. Seleznev appeared to me to be travelling with two other individuals that I observed – a female companion and a female minor child.
5. Both agents were white men, and one was wearing a green t-shirt and jeans.

6. I saw the agent who was wearing a green t-shirt and jeans actually place handcuffs on Mr. Seleznev while in the airport's departure hall.

7. After his arrest, I watched the agents escort Mr. Seleznev to the airport's private "VIP" lounge.

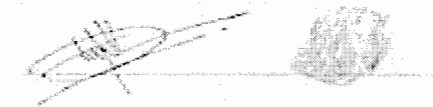
8. The "VIP" lounge is for people traveling by private jet, and it was very unusual for a person arrested at the airport to be taken into this lounge.

9. I saw some Maldives law enforcement officers standing behind Mr. Seleznev at the time of his arrest; however, I did not see these officers speak with Mr. Seleznev or participate in his arrest in any way.

10. As far as I can tell, the apprehension of Mr. Seleznev was carried out by the two United States agents.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

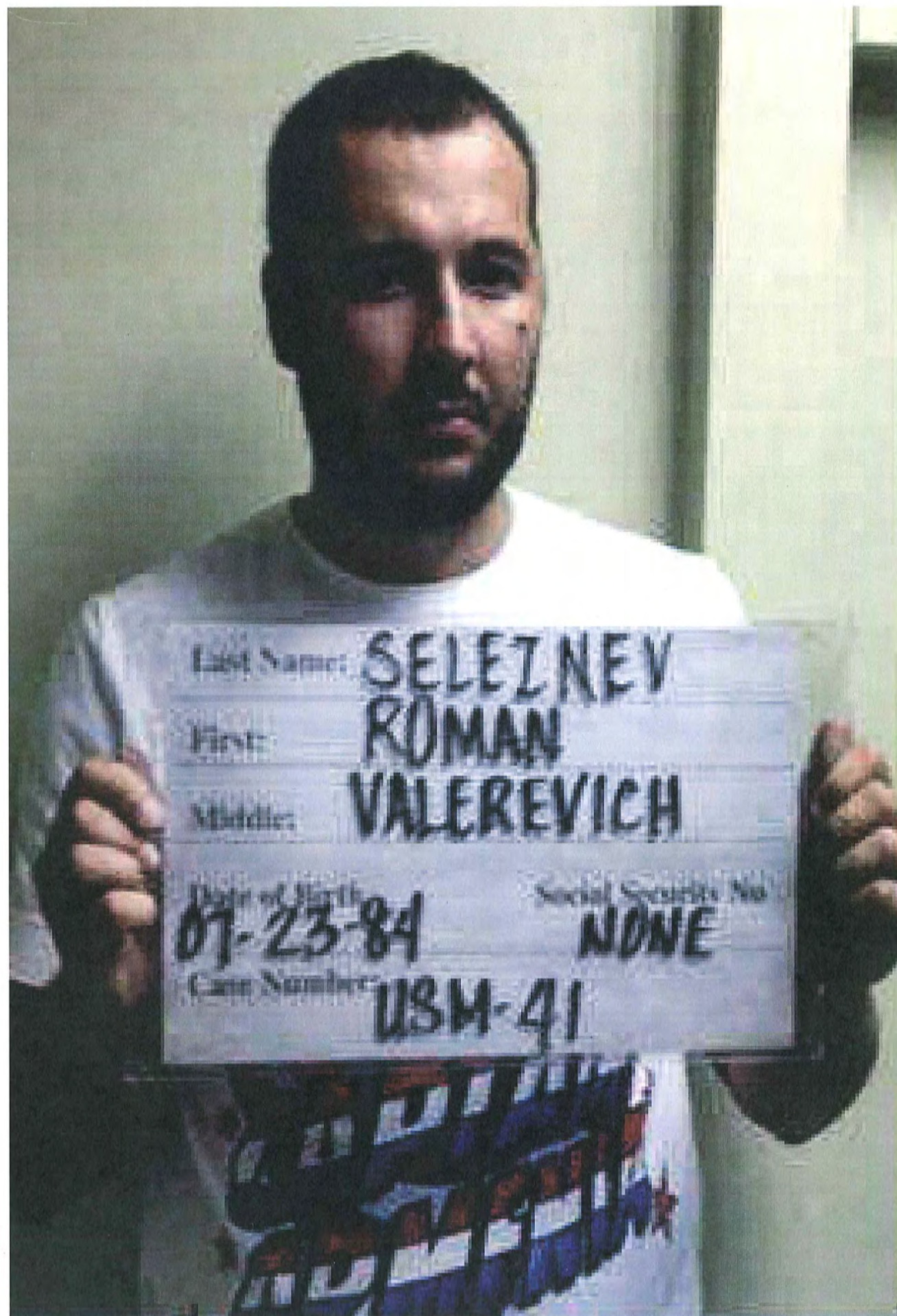
Sign:



Sharafulla Shihab

Date: July 24, 2014

EXHIBIT 12



SELEZNEV_ARREST_00000008



SELEZNEV_ARREST_0000009



SELEZNEV_ARREST_0000016

EXHIBIT 13

1
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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE TERRITORY OF GUAM
9

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 vs.

13 ROMAN SELEZNEV,
14 aka TRACK2,
15 aka ROMAN IVANOV,
16 aka RUBEN SAMVELICH,
17 aka nCuX,
18 aka Bulba,
19 aka brandysli64,
20 aka smaus,
21 aka Zagreb,
22 aka shmak,

23 Defendant.
24

MAGISTRATE CASE NO. 14-00056

**DECISION AND ORDER
RE: MOTION TO DISCHARGE AND
RELEASE DEFENDANT PURSUANT TO
FED. R. CRIM. P. 12(b)(3)(A)**

19 The Motion to Discharge and Release Defendant Pursuant to FED. R. CRIM. P.
20 12(b)(3)(A) came before the court on July 31, 2014. Having considered the parties' arguments
21 and submissions, as well as relevant caselaw and authority, the court orally **DENIED** said
22 motion. The court now issues its written decision.
23
24

1 **I. FACTUAL AND PROCEDURAL BACKGROUND**

2 On July 7, 2014, the United States filed a Petition for Writ of Removal as to Roman
3 Seleznev.¹ *See* ECF No. 1. On that same day, Roman Seleznev (hereinafter “Seleznev”) made his
4 initial appearance before Magistrate Judge Joaquin V.E. Manibusan, Jr. However, the initial
5 appearance (hereinafter referred to as “Rule 5 hearing”) was continued to July 22, 2014, because
6 Seleznev wanted to retain his own counsel. On July 18, 2014, Seleznev’s counsel filed a motion
7 to continue and requested a briefing schedule on a Rule 12 motion that he anticipated to file. *See*
8 ECF No. 10. Consequently, the court vacated the Rule 5 hearing, set a briefing schedule, and
9 subsequently set a hearing date on the motion for discharge and release, as well as the Rule 5
10 hearing (in the event the motion was denied).²

11 On July 21, 2014, Seleznev filed his Rule 12 motion, seeking the court to (1) decline
12 jurisdiction and terminate the prosecution, (2) discharge the case, (3) release him, and (4) issue
13 such other and further relief as may be appropriate. *See* ECF No. 13, at 17. Seleznev alleges the
14 following with respect to the manner in which he was arrested:

- 15 ▪ On or about July 5, 2014, U.S. Secret Service agents:
- 16 ▪ detained Seleznev at the Ibrahim Nasir International Airport (more
17 commonly known as the Malé International Airport) as he was preparing
18 to board a commercial airliner scheduled to depart at approximately 11:55
19 a.m. local time to Moscow;
 - 20 ▪ informed him that he was under arrest;
 - 21 ▪ separated him from his partner and her minor child;
 - 22 ▪ confiscated his mobile phone and laptop and prohibited him from having
23 any communication with his family;
 - 24 ▪ prohibited him from making telephone calls;
 - placed him in a confined holding area;
 - searched his person;
 - physically pushed him onto a couch and instructed him to remain seated;

22 ¹ Filed with the Petition was a copy of a Superseding Indictment pending in the Western District of Washington and
23 an arrest warrant issued in that district.

24 ² Seleznev also filed a motion to continue the hearing on the motion for discharge and release, based on discovery
request (ECF No. 34). The court denied the motion and accepted all factual allegations in Seleznev’s favor as true
for the purposes of hearing the motion for discharge and release.

- presented him with a copy of the indictment originating from the U.S. District Court for the Western District Washington;
- informed him that he was under arrest; and
- handcuffed him.
- Thereafter, Seleznev was led from the holding facility in the airport onto a private jet that was flown to Guam.
- Upon arrival on Guam, Seleznev was transferred into the custody of the U.S. Marshals Service, and he was permitted to make one telephone call.
- Seleznev contends that he was never taken into custody by law enforcement officials of the Republic of the Maldives.
- Seleznev further contends that the United States purposefully circumvented the laws of the Republic of the Maldives and the judicial process of that country.

See ECF No. 13, at 3-6. Based on these factual allegations, Seleznev makes the following legal arguments, which will be discussed *infra*: (1) the court lacks jurisdiction because the manner in which he was arrested constitutes shocking and outrageous government conduct amounting to a due process violation, such that this court is divested of personal jurisdiction over him; (2) the arrest violates customary international law and should shock the conscience of this court and cause it to divest itself of jurisdiction; and (3) the arrest violates *jus cogens* norms of international law and thus, the court should exercise its supervisory power and dismiss the case. *Id.* at 7-16.

As noted by the court during the motion hearing, the court herein incorporates all factual allegations made by Seleznev in his filing and during the July 31, 2014 hearing, and hereby accepts them as true for the purposes of addressing Seleznev's motion for discharge and release.

II. ANALYSIS

a. The court has personal jurisdiction over Seleznev.

Seleznev argues that this court does not have personal jurisdiction over him. Thus, in order for this court to proceed with the Rule 5 hearing, the court must first determine personal jurisdiction. Seleznev's argument on personal jurisdiction is two-fold: first, the arrest constitutes shocking and outrageous government conduct that it amounts to a due process violation; and

1 second, the arrest violates customary international law and should shock the conscience of this
2 court. *See* ECF No. 13, at 9-14.

3 The Ninth Circuit has noted that the starting point in a personal jurisdictional challenge
4 “is the venerable principle that ‘the manner by which a defendant is brought to trial does not
5 affect the government’s ability to try him.’” *United States v. Struckman*, 611 F.3d 560, 571 (9th
6 Cir. 2010) (quoting *United States v. Matta-Ballesteros*, 71 F.3d 754, 762 (9th Cir. 1995)). This is
7 known as the *Ker/Frisbie* doctrine. Recognized exceptions to the *Ker/Frisbie* doctrine are “if
8 either: (1) the transfer of the defendant violated the applicable extradition treaty, or (2) the
9 United States government engaged in misconduct of the most shocking and outrageous kind to
10 obtain his presence.” *United States v. Anderson*, 472 F.3d 662, 666 (9th Cir. 2006) (citing *Matta-*
11 *Ballesteros*, 71 F.3d at 762–64) (internal quotation marks omitted).

12 There is no extradition treaty between the United States and the Republic of the
13 Maldives. Therefore, the court will only address the second exception: whether the government’s
14 conduct was so shocking and outrageous that it would require this court to divest its personal
15 jurisdiction over Seleznev.

16 Having accepted all the factual allegations made by Seleznev in his filings and at the July
17 31, 2014 hearing as true, the court finds that these factual allegations are not shocking and
18 outrageous. Although the court does not condone the actions of the government as alleged by
19 Seleznev, Seleznev’s factual allegations do not meet the extremely high standard required for
20 mandatory divestment of personal jurisdiction. For example, in *Matta-Ballesteros*, the defendant
21 was forcibly abducted from his home in Honduras, wherein the U.S. Marshals “bound his hands,
22 put a black hood over his head, [and] thrust him on the floor of a car[.]” *Matta-Ballesteros*, 71
23 F.3d at 761. The defendant in that case also alleged that he was beaten and tortured by a stun gun
24

1 applied to different parts of his body, including his genitals. *Id.* The court held that the
2 government's conduct was not so shocking and outrageous as to warrant dismissal. *Id.* at 763.

3 As to Seleznev's argument that the arrest violates customary international law, there is no
4 U.S. federal caselaw that specifically allows for mandatory divestment of personal jurisdiction
5 for such.

6 **b. The court does not have the authority to entertain Seleznev's motion to**
7 **dismiss.**

8 Seleznev argues that the circumstances of his arrest violate *jus cogens* norms of
9 international law and thus, the court should exercise its supervisory power and dismiss the case.
10 ECF No. 13, at 15-16.

11 In cases such as this, wherein the defendant was arrested in a district other than where the
12 offense was allegedly committed, Rule 5 of the Federal Rules of Criminal Procedure provides for
13 how the court should properly proceed. Pursuant to FED. R. CRIM. P. 5(c)(3)(D), this court "must
14 transfer the defendant to the district where the offense was allegedly committed if: (i) the
15 government produces the warrant, a certified copy of the warrant, or a reliable electronic form of
16 either; and (ii) the judge finds that the defendant is the same person named in the indictment,
17 information, or warrant[.]"

18 In this case, the United States has produced a certified copy of the arrest warrant for an
19 individual named Roman Seleznev. At the Rule 5 hearing, the court found that the individual
20 arrested is the same person named in the Superseding Indictment.

21 Any other matter must be addressed by the district where the offense was allegedly
22 committed. In *United States v. Green*, 499 F.2d 538 (D.C. Cir. 1974), an indictment was pending
23 in the Southern District of Florida but the indictees were arrested in the District of Columbia.
24 The indictees then moved the District Court for the District of Columbia for dismissal of the

1 indictment pending in Florida, and the district court granted the dismissal of the case. *Id.* at 539.
2 The appellate court overturned the district court's dismissal and held that "[t]he clear mandate of
3 [former] Rule 40³ sharply limits the function and authority of the magistrate, and by the same
4 token the jurisdiction of the district court for the transferor district. Where the terms of [the
5 removal rule] are met in a proceeding for removal in furtherance of a prosecution by indictment,
6 that court lacks power to dismiss either the proceeding or the prosecution." *Id.* at 541. In
7 reaching its conclusion, the appellate court stated:

8 A contrary provision would threaten consequences seriously adverse to the
9 orderly administration of criminal justice, not the least of which is potential
10 frustration of the unequivocal objective of [the removal rule] to avoid delay in
11 bringing arrestees to trial. The full panoply of defenses is, of course, available to
12 the arrestee in the transferee court, and any inconvenience incidental to assertion
13 of defenses there is simply unavoidable.

14 *Green*, 499 F.2d at 541. Similarly, the Ninth Circuit in *Vazquez v. United States District*
15 *Court for the District of Nevada*, 572 F.2d 697 (9th Cir. 1978), refused to allow a
16 defendant resisting his removal under the former Rule 40 to file a motion to suppress. *See*
17 *also Frost v. Yankwich*, 254 F.2d 633, 637 (9th Cir. 1958) ("Petitioner's remedy, if any,
18 lies in the Illinois jurisdiction. If he has a defense, it is there that it must be presented.").

19 **III. CONCLUSION**

20 The court finds that the factual allegations by Seleznev are not so shocking and
21 outrageous that it would require mandatory divestment of personal jurisdiction. In addition, the
22 court finds that it does not have the authority to entertain Seleznev's motion to dismiss the case,
23 as that authority lies within the indicting court. Accordingly, for the reasons set forth above, the
24 court hereby **DENIES** Seleznev's motion for release and discharge pursuant to FED. R. CRIM. P.
12(b)(3)(A). This court notes, however, that its decision on Seleznev's motion shall not preclude

³ Effective December 1, 2002, the substance of former Rule 40(a) was moved to Rules 5 and 5.1. *See* Advisory Committee Notes to 2002 Amendments to FED. R. CRIM. P. 40.

1 him from reasserting the same allegations at the U.S. District Court for the Western District of
2 Washington for further consideration by that court, based on full discovery.

3 **SO ORDERED.**



/s/ Frances M. Tydingco-Gatewood
Chief Judge
Dated: Aug 07, 2014

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EXHIBIT 14

U.S. Attorneys' Manual 9-15.100, 1997 WL 1944598 (U.S.A.M.)

UNITED STATES DEPARTMENT OF JUSTICE
CHAPTER 9-15.000 INTERNATIONAL EXTRADITION AND RELATED MATTERS

2009

9-15.100 Definition and General Principles

International extradition is the formal process by which a person found in one country is surrendered to another country for trial or punishment. The process is regulated by treaty and conducted between the Federal Government of the United States and the government of a foreign country. It differs considerably from interstate rendition, commonly referred to as interstate extradition, mandated by the Constitution, Art. 4, Sec. 2.

Generally under United States law (18 U.S.C. § 3184), extradition may be granted only pursuant to a treaty. However, some countries grant extradition without a treaty. However, every such country requires an offer of reciprocity when extradition is accorded in the absence of a treaty. Further, the 1996 amendments to 18 U.S.C. 3181 and 3184 permit the United States to extradite, without regard to the existence of a treaty, persons (other than citizens, nationals or permanent residents of the United States), who have committed crimes of violence against nationals of the United States in foreign countries. A list of countries with which the United States has an extradition treaty relationship can be found in the Federal Criminal Code and Rules, following 18 U.S.C. § 3181, but consult the Criminal Division's Office of International Affairs (OIA) to verify the accuracy of the information. See the Criminal Resource Manual at 535 for the text of § 3184, and at 536 for links to some of the extradition treaties the United States has negotiated.

Because the law of extradition varies from country to country and is subject to foreign policy considerations, prosecutors should consult OIA for advice on any matter relating to extradition before taking any action in such a case, especially before contacting any foreign official.

See the Criminal Resource Manual at 601, for a discussion of the constitutionality of 18 U.S.C. § 3184.

U.S. Attorneys' Manual 9-15.100, 1997 WL 1944598 (U.S.A.M.)

END OF DOCUMENT

U.S. Attorneys' Manual 9-15.200, 1997 WL 1944599 (U.S.A.M.)

UNITED STATES DEPARTMENT OF JUSTICE
CHAPTER 9-15.000 INTERNATIONAL EXTRADITION AND RELATED MATTERS

2009

9-15.200 Procedures For Requesting

Extradition

From Abroad

See the Criminal Resource Manual at 602.

U.S. Attorneys' Manual 9-15.200, 1997 WL 1944599 (U.S.A.M.)

END OF DOCUMENT

U.S. Attorneys' Manual 9-15.210, 1997 WL 1944600 (U.S.A.M.)

UNITED STATES DEPARTMENT OF JUSTICE
CHAPTER 9-15.000 INTERNATIONAL EXTRADITION AND RELATED MATTERS

2009

9-15.210 Role of the Office of International Affairs

The Office of International Affairs (OIA) provides information and advice to Federal and State prosecutors about the procedure for requesting extradition from abroad. OIA also advises and provides support to Federal prosecutors handling foreign extradition requests for fugitives found in the United States.

Every formal request for international extradition based on Federal criminal charges must be reviewed and approved by OIA. At the request of the Department of State, formal requests based on State charges are also reviewed by OIA before submission to the Department of State.

Acting either directly or through the Department of State, OIA initiates all requests for provisional arrest of fugitives pursuant to extradition treaties. Neither prosecutors nor agents are permitted to contact their foreign counterparts to request the arrest of a fugitive for extradition. Unauthorized requests cause serious diplomatic difficulties and may subject the requester to financial liability or other sanctions.

Every extradition treaty is negotiated separately, and each contains different provisions. Experience with one treaty is not a guide to all others. Therefore, after reviewing this section of the United States Attorneys' Manual, the first step in any extradition case should be to contact OIA. Attorneys in OIA will advise prosecutors about the potential for extradition in a given case and the steps to be followed.

U.S. Attorneys' Manual 9-15.210, 1997 WL 1944600 (U.S.A.M.)

END OF DOCUMENT

U.S. Attorneys' Manual 9-15.220, 1997 WL 1944601 (U.S.A.M.)

UNITED STATES DEPARTMENT OF JUSTICE
CHAPTER 9-15.000 INTERNATIONAL EXTRADITION AND RELATED MATTERS

2009

9-15.220 Determination of Extraditability

See the Criminal Resource Manual at 603.

U.S. Attorneys' Manual 9-15.220, 1997 WL 1944601 (U.S.A.M.)

END OF DOCUMENT

U.S. Attorneys' Manual 9-15.225, 1997 WL 1944602 (U.S.A.M.)

UNITED STATES DEPARTMENT OF JUSTICE
CHAPTER 9-15.000 INTERNATIONAL EXTRADITION AND RELATED MATTERS

2009

9-15.225 Procedure When Fugitive is Non-Extraditable

If the fugitive is not extraditable, other steps may be available to return him or her to the United States or to restrict his or her ability to live and travel overseas. See USAM 9-15.600 *et seq.* These steps, if taken, should likewise be documented.

Courts may require the government to request the extradition of a fugitive as soon as his or her location becomes known, unless the effort would be useless. If the decision is made to not seek extradition in a particular case, the prosecutor and the Office of International Affairs (OIA) will make a record to document why extradition was not possible in the event of a subsequent Speedy Trial challenge.

[cited in USAM 9-15.600; Criminal Resource Manual 602]

U.S. Attorneys' Manual 9-15.225, 1997 WL 1944602 (U.S.A.M.)

END OF DOCUMENT

U.S. Attorneys' Manual 9-15.230, 1997 WL 1944603 (U.S.A.M.)

UNITED STATES DEPARTMENT OF JUSTICE
CHAPTER 9-15.000 INTERNATIONAL EXTRADITION AND RELATED MATTERS

2009

9-15.230 Request for Provisional Arrest

Every extradition treaty to which the United States is a party requires a formal request for extradition, supported by appropriate documents. Because the time involved in preparing a formal request can be lengthy, most treaties allow for the provisional arrest of fugitives in urgent cases. Once the United States requests provisional arrest pursuant to the treaty, the fugitive will be arrested and detained (or, in some countries, released on bail) as soon as he or she is located. Thereafter, the United States must submit a formal request for extradition, supported by all necessary documents, duly certified, authenticated and translated into the language of the country where the fugitive was arrested, within a specified time (from 30 days to three months, depending on the treaty). See USAM 9-15.240. Failure to follow through on an extradition request by submitting the requisite documents after a provisional arrest has been made will result in release of the fugitive, strains on diplomatic relations, and possible liability for the prosecutor.

The Office of International Affairs (OIA) determines whether the facts meet the requirement of urgency under the terms of the applicable treaty. If they do, OIA requests provisional arrest; if not, the prosecutor assembles the documents for a formal request. The latter method is favored when the defendant is unlikely to flee because the time pressures generated by a request for provisional arrest often result in errors that can damage the case. If provisional arrest is necessary because of the risk of flight, the prosecutor should complete the form for requesting provisional arrest and forward it, along with a copy of the charging document and arrest warrant, to OIA by fax (see the Criminal Resource Manual at 604); alternatively, this exchange of forms and completed requests between the United States Attorney and OIA can be made by Email. State prosecutors who request provisional arrest must also certify that the necessary documents will be submitted on time and that all expenses, including the cost of transportation by United States Marshals, will be covered.

Prosecutors should complete the form in any case in which it appears that provisional arrest may be necessary. Once it is completed, it may be emailed directly to the Office of International Affairs (OIA) attorney or team responsible for the country in which the fugitive has been found or emailed to the general OIA email address, CRM03(OIAINBOX), and OIA's docketing unit will forward it to the appropriate attorney in OIA. The form may also be faxed to OIA at (202) 514-0080. A copy of the charging document and warrant should be faxed to OIA.

The form was created with both Federal and State cases in mind. Thus, Assistant United States Attorneys are free to print the form and give it to state and local prosecutors working on extradition cases. State prosecutors should fax the form to OIA at (202) 514-0080.

[cited in USAM 9-15.700]

U.S. Attorneys' Manual 9-15.230, 1997 WL 1944603 (U.S.A.M.)

END OF DOCUMENT

U.S. Attorneys' Manual 9-15.240, 1997 WL 1944604 (U.S.A.M.)

UNITED STATES DEPARTMENT OF JUSTICE
CHAPTER 9-15.000 INTERNATIONAL EXTRADITION AND RELATED MATTERS

2009

9-15.240 Documents Required in Support of Request for
Extradition

The request for extradition is made by diplomatic note prepared by the Department of State and transmitted to the foreign government through diplomatic channels. It must be accompanied by the documents specified in the treaty. The Office of International Affairs (OIA) will advise the prosecutor of the documentary requirements, but it is the responsibility of the prosecutor to prepare and assemble them and forward the original and four copies to OIA in time to be reviewed, authenticated, translated, and sent through the Department of State to the foreign government by the deadline.

OIA will provide samples of the documents required in support of the request for extradition. Although every treaty varies, all generally require:

- An affidavit from the prosecutor explaining the facts of the case. See Criminal Resource Manual at 605.
- Copies of the statutes alleged to have been violated and the statute of limitations. See Criminal Resource Manual at 607.
- If the fugitive has not been convicted, certified copies of the arrest warrant and complaint or indictment. See Criminal Resource Manual at 606.
- Evidence, in the form of affidavits or grand jury transcripts, establishing that the crime was committed, including sufficient evidence (i.e., photograph, fingerprints, and affidavit of identifying witness) to establish the defendant's identity (CAVEAT: The use of grand jury transcripts or trial transcripts should, if at all possible, be avoided). See Criminal Resource Manual at 608.
- If the fugitive has been convicted, a certified copy of the order of judgment and committal establishing the conviction, an affidavit stating the sentence was not or was only partially served and the amount of time remaining to be served, and evidence concerning identity. See Criminal Resource Manual at 609.

Prosecutors should be aware that there are few workable defenses to extradition, although appeals and delays are common. Fugitives, however, may be able to contest extradition on the basis of minor inconsistencies resulting from clerical or typographical errors. Although these can be remedied eventually, they take time to untangle. Therefore, pay careful attention to detail in preparing the documents.

[cited in USAM 9-15.230]

U.S. Attorneys' Manual 9-15.240, 1997 WL 1944604 (U.S.A.M.)

END OF DOCUMENT

U.S. Attorneys' Manual 9-15.250, 1997 WL 1944605 (U.S.A.M.)

UNITED STATES DEPARTMENT OF JUSTICE
CHAPTER 9-15.000 INTERNATIONAL EXTRADITION AND RELATED MATTERS

2009

9-15.250 Procedure After Assembling Documents

After assembling the documents required in support of extradition, the prosecutor must review them carefully to ensure that all dates and charges mentioned in the affidavit and accompanying exhibits are consistent.

Unless told that the foreign country will require a different number of copies of the documents, the prosecutor should forward the original and four copies of the entire package to Office of International Affairs (OIA).

Attorneys in OIA review the package for completeness and send a copy to the Department of State for translation, which can take three weeks even for common languages. The cost of translation will be billed to the district requesting extradition. OIA secures the required certifications on the original and transmits it to the Department of State.

U.S. Attorneys' Manual 9-15.250, 1997 WL 1944605 (U.S.A.M.)

END OF DOCUMENT

U.S. Attorneys' Manual 9-15.300, 1997 WL 1944606 (U.S.A.M.)

UNITED STATES DEPARTMENT OF JUSTICE
CHAPTER 9-15.000 INTERNATIONAL EXTRADITION AND RELATED MATTERS

2009

9-15.300 Procedure in the Foreign Country

The Department of State will send the extradition documents and the translation to the American Embassy in the foreign country, which will present them under cover of a diplomatic note formally requesting extradition to the appropriate agency of the foreign government, usually the foreign ministry. The request and supporting documents are then forwarded to the court or other body responsible for determining whether the requirements of the treaty and the country's domestic law have been met.

In general, the foreign government's decision on our extradition request is based on the request itself and any evidence presented by the fugitive. Because the American prosecutor will not have the opportunity to appear before the foreign court, the written submission, particularly the prosecutor's affidavit, must be as persuasive as possible. This is particularly essential when the charges are based on statutes unique to United States law, such as RICO or CCE.

Though factual defenses to extradition are limited, the fugitive may delay a decision through procedural challenges. The determination of extraditability is often subject to review or appeal. Prediction of the time required to return an individual to the United States is difficult and depends on the circumstances of the individual case and the practice of the foreign country involved.

U.S. Attorneys' Manual 9-15.300, 1997 WL 1944606 (U.S.A.M.)

END OF DOCUMENT

U.S. Attorneys' Manual 9-15.400, 1997 WL 1944607 (U.S.A.M.)

UNITED STATES DEPARTMENT OF JUSTICE
CHAPTER 9-15.000 INTERNATIONAL EXTRADITION AND RELATED MATTERS

2009

9-15.400 Return of the Fugitive

Once the foreign authorities notify the American Embassy that the fugitive is ready to be surrendered, the Office of International Affairs (OIA) will inform the prosecutor and arrange with the United States Marshals Service for agents to escort the fugitive to the United States. United States Marshals must provide the escort even in a State case. However, in rare cases arrangements are sometimes made for State or other federal law enforcement agents to accompany the U.S. Marshals. If the fugitive is an alien, OIA will ask the INS to issue a "parole letter" authorizing the alien to enter the country.

U.S. Attorneys' Manual 9-15.400, 1997 WL 1944607 (U.S.A.M.)

END OF DOCUMENT

U.S. Attorneys' Manual 9-15.500, 1997 WL 1944608 (U.S.A.M.)

UNITED STATES DEPARTMENT OF JUSTICE
CHAPTER 9-15.000 INTERNATIONAL EXTRADITION AND RELATED MATTERS

2009

9-15.500 Post

Extradition

Considerations--Limitations on Further Prosecution

Every extradition treaty limits extradition to certain offenses. As a corollary, all extradition treaties restrict prosecution or punishment of the fugitive to the offense for which extradition was granted unless (1) the offense was committed after the fugitive's extradition or (2) the fugitive remains in the jurisdiction after expiration of a "reasonable time" (generally specified in the extradition treaty itself) following completion of his punishment. This limitation is referred to as the Rule of Specialty. Prosecutors who wish to proceed against an extradited person on charges other than those for which extradition was granted must contact the Office of International Affairs (OIA) for guidance regarding the availability of a waiver of the Rule by the sending State.

Frequently, defendants who have been extradited to the United States attempt to dismiss or limit the government's case against them by invoking the Rule of Specialty. There is a split in the courts on whether the defendant has standing to raise specialty: some courts hold that only a party to the Treaty (i.e., the sending State) may complain about an alleged violation of the specialty provision, other courts allow the defendant to raise the issue on his own behalf, and other courts take a middle position and allow the defendant to raise the issue if it is likely that the sending State would complain as well. Whenever a defendant raises a specialty claim, the prosecutor should contact OIA for assistance in responding.

Defendants also occasionally make other substantive or procedural challenges to their extradition. It is impossible to anticipate all the creative challenges that may be devised; if a returned defendant challenges his extradition, you should contact OIA.

U.S. Attorneys' Manual 9-15.500, 1997 WL 1944608 (U.S.A.M.)

END OF DOCUMENT

U.S. Attorneys' Manual 9-15.600, 1997 WL 1944609 (U.S.A.M.)

UNITED STATES DEPARTMENT OF JUSTICE
CHAPTER 9-15.000 INTERNATIONAL EXTRADITION AND RELATED MATTERS

2009

9-15.600 Alternatives To

Extradition

A fugitive may be non-extraditable for any number of reasons, including but not limited to instances where he or she is a national of the country of refuge, the crime is not an extraditable offense, the statute of limitations has run in the foreign country, or extradition was requested and denied. (If, after discussing the case with the Office of International Affairs (OIA), the prosecutor concludes that the fugitive is not extraditable, that conclusion and the reasons should be documented. See USAM 9-15.225.)

There may be available alternatives that will result either in the return of the fugitive or limitations on his or her ability to live or travel overseas. OIA will advise the prosecutor concerning the availability of these methods. These alternative methods are discussed in USAM 9-15.610- 650.

[cited in USAM 9-15.225]

U.S. Attorneys' Manual 9-15.600, 1997 WL 1944609 (U.S.A.M.)

END OF DOCUMENT

U.S. Attorneys' Manual 9-15.610, 1997 WL 1944610 (U.S.A.M.)

UNITED STATES DEPARTMENT OF JUSTICE
CHAPTER 9-15.000 INTERNATIONAL EXTRADITION AND RELATED MATTERS

2009

9-15.610 Deportations, Expulsions, or other Extraordinary Renditions

If the fugitive is not a national or lawful resident of the country in which he or she is located, the Office of International Affairs (OIA), through the Department of State or other channels, may ask that country to deport or expel the fugitive.

In *United States v. Alvarez-Machain*, 504 U.S. 655 (1992), the Supreme Court ruled that a court has jurisdiction to try a criminal defendant even if the defendant was abducted from a foreign country against his or her will by United States agents. Though this decision reaffirmed the long-standing proposition that personal jurisdiction is not affected by claims of abuse in the process by which the defendant is brought before the court, it sparked concerns about potential abuse of foreign sovereignty and territorial integrity.

Due to the sensitivity of abducting defendants from a foreign country, prosecutors may not take steps to secure custody over persons outside the United States (by government agents or the use of private persons, like bounty hunters or private investigators) by means of *Alvarez-Machain* type renditions without advance approval by the Department of Justice. Prosecutors must notify the Office of International Affairs before they undertake any such operation. If a prosecutor anticipates the return of a defendant, with the cooperation of the sending State and by a means other than an *Alvarez-Machain* type rendition, and that the defendant may claim that his return was illegal, the prosecutor should consult with OIA before such return. See Criminal Resource Manual at 610, for further discussion of the law on this issue.

[cited in USAM 9-15.600]

U.S. Attorneys' Manual 9-15.610, 1997 WL 1944610 (U.S.A.M.)

END OF DOCUMENT

U.S. Attorneys' Manual 9-15.620, 1997 WL 1944611 (U.S.A.M.)

UNITED STATES DEPARTMENT OF JUSTICE
CHAPTER 9-15.000 INTERNATIONAL EXTRADITION AND RELATED MATTERS

2009

9-15.620

Extradition

From a Third Country

If the fugitive travels outside the country from which he or she is not extraditable, it may be possible to request his or her extradition from another country. This method is often used for fugitives who are citizens in their country of refuge. Some countries, however, will not permit extradition if the defendant has been lured into their territory. Such ruses may also cause foreign relations problems with both the countries from which and to which the lure takes place. Prosecutors must notify the Office of International Affairs before pursuing any scenario involving an undercover or other operation to lure a fugitive into a country for law enforcement purposes (extradition, deportation, prosecution).

[cited in USAM 9-15.635]

U.S. Attorneys' Manual 9-15.620, 1997 WL 1944611 (U.S.A.M.)

END OF DOCUMENT

U.S. Attorneys' Manual 9-15.630, 1997 WL 1944612 (U.S.A.M.)

UNITED STATES DEPARTMENT OF JUSTICE
CHAPTER 9-15.000 INTERNATIONAL EXTRADITION AND RELATED MATTERS

2009

9-15.630 Lures

A lure involves using a subterfuge to entice a criminal defendant to leave a foreign country so that he or she can be arrested in the United States, in international waters or airspace, or in a third country for subsequent extradition, expulsion, or deportation to the United States. Lures can be complicated schemes or they can be as simple as inviting a fugitive by telephone to a party in the United States.

As noted above, some countries will not extradite a person to the United States if the person's presence in that country was obtained through the use of a lure or other ruse. In addition, some countries may view a lure of a person from its territory as an infringement on its sovereignty. Consequently, a prosecutor must consult with the Office of International Affairs before undertaking a lure to the United States or a third country.

U.S. Attorneys' Manual 9-15.630, 1997 WL 1944612 (U.S.A.M.)

END OF DOCUMENT

U.S. Attorneys' Manual 9-15.635, 1997 WL 1944613 (U.S.A.M.)

UNITED STATES DEPARTMENT OF JUSTICE
CHAPTER 9-15.000 INTERNATIONAL EXTRADITION AND RELATED MATTERS

2009

9-15.635 Interpol Red Notices

An Interpol Red Notice is the closest instrument to an international arrest warrant in use today. Please be aware that if a Red Notice is issued, the prosecutor's office is obligated to do whatever work is required to produce the necessary extradition documents within the time limits prescribed by the controlling extradition treaty whenever and wherever the fugitive is arrested. Further, the prosecutor's office is obliged to pay the expenses pursuant to the controlling treaty.

Interpol Red Notices are useful when the fugitive's location or the third country to which he or she may travel (see USAM 9-15.620), is unknown. For additional information about Interpol Red Notices, see the Criminal Resource Manual at 611.

U.S. Attorneys' Manual 9-15.635, 1997 WL 1944613 (U.S.A.M.)

END OF DOCUMENT

U.S. Attorneys' Manual 9-15.640, 1997 WL 1944614 (U.S.A.M.)

UNITED STATES DEPARTMENT OF JUSTICE
CHAPTER 9-15.000 INTERNATIONAL EXTRADITION AND RELATED MATTERS

2009

9-15.640 Revocation of United States Passports

The Department of State may revoke the passport of a person who is the subject of an outstanding Federal warrant. Revocation of the passport can result in loss of the fugitive's lawful residence status, which may lead to his or her deportation. If the fugitive is wanted on State charges only, it will be necessary to obtain a warrant on a UFAP complaint because the Department of State is only authorized to revoke the passports of persons named in Federal warrants.

U.S. Attorneys' Manual 9-15.640, 1997 WL 1944614 (U.S.A.M.)

END OF DOCUMENT

U.S. Attorneys' Manual 9-15.650, 1997 WL 1944615 (U.S.A.M.)

UNITED STATES DEPARTMENT OF JUSTICE
CHAPTER 9-15.000 INTERNATIONAL EXTRADITION AND RELATED MATTERS

2009

9-15.650 Foreign Prosecution

If the fugitive has taken refuge in the country of which he or she is a national, and is thereby not extraditable, it may be possible to ask that country to prosecute the individual for the crime that was committed in the United States. This can be an expensive and time consuming process and in some countries domestic prosecution is limited to certain specified offenses. In addition, a request for domestic prosecution in a particular case may conflict with U.S. law enforcement efforts to change the "non-extradition of nationals" law or policy in the foreign country. Whether this option is available or appropriate should be discussed with OIA.

[cited in USAM 9-15.600]

U.S. Attorneys' Manual 9-15.650, 1997 WL 1944615 (U.S.A.M.)

END OF DOCUMENT

U.S. Attorneys' Manual 9-15.700, 1997 WL 1944616 (U.S.A.M.)

UNITED STATES DEPARTMENT OF JUSTICE
CHAPTER 9-15.000 INTERNATIONAL EXTRADITION AND RELATED MATTERS

2009

9-15.700 Foreign

Extradition

Requests

Foreign requests for extradition of fugitives from the United States are ordinarily submitted by the embassy of the country making the request to the Department of State, which reviews and forwards them to the Criminal Division's Office of International Affairs (OIA). The requests are of two types: formal requisitions supported by all documents required under the applicable treaty, or requests for provisional arrest. (Requests for provisional arrest may be received directly by the Department of Justice if the treaty permits. See USAM 9-15.230 for an explanation of provisional arrest.)

When OIA received a foreign extradition request, in summary, the following occurs:

1. OIA reviews both types of requests for sufficiency and forwards appropriate ones to the district.
2. The Assistant United States Attorney assigned to the case obtains a warrant and the fugitive is arrested and brought before the magistrate judge or the district judge.
3. The government opposes bond in extradition cases.
4. A hearing under 18 U.S.C. § 3184 is scheduled to determine whether the fugitive is extraditable. If the court finds the fugitive to be extraditable, it enters an order of extraditability and certifies the record to the Secretary of State, who decides whether to surrender the fugitive to the requesting government. In some cases a fugitive may waive the hearing process.
5. OIA notifies the foreign government and arranges for the transfer of the fugitive to the agents appointed by the requesting country to receive him or her. Although the order following the extradition hearing is not appealable (by either the fugitive or the government), the fugitive may petition for a writ of habeas corpus as soon as the order is issued. The district court's decision on the writ is subject to appeal, and the extradition may be stayed if the court so orders.

See Criminal Resource Manual at 612, for a more detailed discussion of foreign extradition requests.

U.S. Attorneys' Manual 9-15.700, 1997 WL 1944616 (U.S.A.M.)

END OF DOCUMENT

U.S. Attorneys' Manual 9-15.800, 1997 WL 1944617 (U.S.A.M.)

UNITED STATES DEPARTMENT OF JUSTICE
CHAPTER 9-15.000 INTERNATIONAL EXTRADITION AND RELATED MATTERS

2009

9-15.800 Plea Agreements and Related Matters--Prohibition

Persons who are cooperating with a prosecutor may try to include a "no extradition" clause in their plea agreements. Such agreements, whether formal or informal, may be given effect by the courts. If a foreign country subsequently requests the person's extradition, the United States faces the unpleasant dilemma of breaching its solemn word either to the person involved or to its treaty partner. *Petition of Geisser*, 627 F.2d 745 (5th Cir. 1980), describes the enormous practical problems of resolving such a dilemma. Related matters involve agreements with potential witnesses to prevent or delay their deportation.

Prosecutors may not agree either formally or informally to prevent or delay extradition or deportation unless they submit a written request for authorization, and receive an express written approval from the Assistant Attorney General, Criminal Division. Requests should be submitted to the Office of International Affairs after endorsement by the head of the section or office responsible for supervising the case.

[cited in USAM 9-16.020; USAM 9-73.510]

U.S. Attorneys' Manual 9-15.800, 1997 WL 1944617 (U.S.A.M.)

END OF DOCUMENT

EXHIBIT 15

Functional Translation of the

Constitution

of the

Republic of Maldives

2008

Done By

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At the Request of

Ministry of Legal Reform, Information and Arts

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CHAPTER I

STATE, SOVEREIGNTY AND CITIZENS

- | | | |
|---------------------------|----|---|
| Constitution | 1. | This is the " <i>Constitution of the Republic of the Maldives</i> ". Any reference to the "Constitution" herein is a reference to the Constitution of the Republic of the Maldives. |
| Republic of the Maldives | 2. | The Maldives is a sovereign, independent, democratic Republic based on the principles of Islam, and is a unitary State, to be known as the Republic of the Maldives. Any reference to "the Maldives" is a reference to the Republic of the Maldives. |
| Territory of the Maldives | 3. | The territory of the Maldives encompasses the land, air space, sea and seabed within the archipelagic baselines of the Maldives drawn in accordance with the law, and includes the territorial waters, the seabed and air space thereof beyond the said baselines. Any changes to the territory of the Maldives may only be made pursuant to a law enacted by at least a two-third majority of the total membership of the People's Majlis. |
| Powers of the citizens | 4. | All the powers of the State of the Maldives are derived from, and remain with, the citizens. |
| Legislative power | 5. | All legislative power in the Maldives is vested in the People's Majlis. |
| Executive power | 6. | As provided for in this Constitution the executive power is vested in the President. |
| Judicial power | 7. | The judicial power is vested in the courts of the Maldives. |

Supremacy of
Constitution

8. The powers of the State shall be exercised in accordance with this Constitution.

Citizens

9. (a) The following persons are citizens of the Maldives:

1. citizens of the Maldives at the commencement of this Constitution;
2. children born to a citizen of the Maldives; and
3. foreigners who, in accordance with the law, become citizens of the Maldives.

(b) No citizen of the Maldives may be deprived of citizenship.

(c) Any person who wishes to relinquish his citizenship may do so in accordance with law.

(d) Despite the provisions of article (a) a non-Muslim may not become a citizen of the Maldives.

State Religion

10. (a) The religion of the State of the Maldives is Islam. Islam shall be the one of the basis of all the laws of the Maldives

(b) No law contrary to any tenet of Islam shall be enacted in the Maldives

National Language

11. The national language of the Maldives is Dhivehi.

National Flag

12. (a) The national flag of the Maldives consists of a white crescent in the centre of a green rectangle

surrounded by a red border.

(b) The dimensions and colour code of the national flag and the placing of the crescent on the national flag shall be as specified in Schedule 3 of this Constitution.

Currency of the
Maldives

13. The unit of currency of the Maldives is the Rufiyaa, divided into one hundred Laari.

Capital

14. The capital of the Maldives is the island of Male'.

National Day

15. The national day of the Maldives is the first day of the month of Rabeeu al-Awwal.

CHAPTER II

FUNDAMENTAL RIGHTS AND FREEDOMS

Guarantee of Rights **16.**

(a) This Constitution guarantees to all persons, in a manner that is not contrary to any tenet of Islam, the rights and freedoms contained within this Chapter, subject only to such reasonable limits prescribed by a law enacted by the People's Majlis in a manner that is not contrary to this Constitution. Any such law enacted by the People's Majlis can limit the rights and freedoms to any extent only if demonstrably justified in a free and democratic society.

(b) The limitation of a right or freedom specified in this Chapter by a law enacted by the People's Majlis as provided for in this Constitution, and

in order to protect and maintain the tenets of Islam, shall not be contrary to article (a).

(c) In deciding whether a right or freedom in this Chapter, has been limited in accordance with article (a) and (b), a court must be fully cognisant of and make reference to all the facts, including:

1. the nature and character of the right or freedom;
2. the purpose and importance of limiting the right or freedom;
3. the extent and manner of limiting the right or freedom;
4. the relationship between the limitation of the right or freedom and the importance of the right or freedom;
5. the extent to which the objective for which the right or freedom has been limited could have been achieved by limiting the right or freedom to a lesser degree;
6. the extent to which the right or freedom must be limited in order to protect the tenets of Islam, where the right or freedom has been limited pursuant to article (b).

(d) The onus of establishing that the limitation to any extent, of a right or freedom included in this Chapter is within the reasonable limitations prescribed in this Constitution is on the State or the person asserting the limitation of the right or freedom.

- Non-discrimination 17. (a) Everyone is entitled to the rights and freedoms included in this Chapter without discrimination of any kind, including race, national origin, colour, sex, age, mental or physical disability, political or other opinion, property, birth or other status, or native island.
- (b) Special assistance or protection to disadvantaged individuals or groups, or to groups requiring special social assistance, as provided in law shall not be deemed to be discrimination, as provided for in article (a).
- Duty of the State 18. It is the duty of the State to follow the provisions of this Constitution, and to protect and promote the rights and freedoms provided in this Chapter.
- Freedom from restraint 19. A citizen is free to engage in any conduct or activity that is not expressly prohibited by Islamic Shari'ah or by law. No control or restraint may be exercised against any person unless it is expressly authorised by law.
- Equality 20. Every individual is equal before and under the law, and has the right to the equal protection and equal benefit of the law.
- Right to life 21. Everyone has the right to life, liberty and security of the person, and the right not be deprived thereof to any extent except pursuant to a law made in accordance with Article 16 of this Constitution.
- Protection of the environment 22. The State has a fundamental duty to protect and preserve the natural environment, biodiversity, resources and beauty of the country for the benefit of present and future generations. The State shall undertake and promote desirable economic and social goals through ecologically balanced sustainable development and shall take measures necessary to

foster conservation, prevent pollution, the extinction of any species and ecological degradation from any such goals.

Economic and social
rights

23. Every citizen the following rights pursuant to this Constitution, and the State undertakes to achieve the progressive realisation of these rights by reasonable measures within its ability and resources:

- (a) adequate and nutritious food and clean water;
- (b) clothing and housing;
- (c) good standards of health care, physical and mental;
- (d) a healthy and ecologically balanced environment;
- (e) equal access to means of communication, the State media, transportation facilities, and the natural resources of the country;
- (f) the establishment of a sewage system of a reasonably adequate standard on every inhabited island;
- (g) the establishment of an electricity system of a reasonably adequate standard on every inhabited island that is commensurate to that island.

Privacy

24. Everyone has the right to respect for his private and family life, his home and his private communications. Every person must respect these rights with respect to others.

No slavery or forced
labour

25.

(a) No one shall be held in slavery or servitude, or be required to perform forced labour.

(b) Compulsory military service, service required in cases of emergency or calamity threatening the life or well-being of the community, or service required pursuant to a court order shall not be deemed to be contrary to article (a).

Right to vote and
run for public office

26.

Unless otherwise provided in this Constitution, every citizen of the Maldives eighteen years of age or older has the right:

(a) to vote in elections, and in public referendums, which shall be held by secret ballot;

(b) to run for public office;

(c) to take part in the conduct of public affairs, directly or through freely chosen representatives.

Freedom of
expression

27.

Everyone has the right to freedom of thought and the freedom to communicate opinions and expression in a manner that is not contrary to any tenet of Islam.

Freedom of the
media

28.

Everyone has the right to freedom of the press, and other means of communication, including the right to espouse, disseminate and publish news, information, views and ideas. No person shall be compelled to disclose the source of any information that is espoused, disseminated or published by that person.

Freedom of
acquiring and
imparting
knowledge

29.

Everyone has the freedom to acquire and impart knowledge, information and learning.

Freedom to form
political parties,
associations and
societies

30. (a) Every citizen has the right to establish and to participate in the activities of political parties.

(b) Everyone has the freedom to form associations and societies, including the following:

1. the right to establish and participate in any association or society for economic, social, educational or cultural or purposes;
2. the right to form trade unions, to participate or not participate in their activities.

Right to strike

31. Every person employed in the Maldives and all other workers have the freedom to stop work and to strike in order to protest.

Freedom of
assembly

32. Everyone has the right to freedom of peaceful assembly without prior permission of the State.

Right to protect
reputation and name

33. Everyone has the right to protect one's reputation and good name.

Right to marry and
establishment of the
family

34. (a) Every person of marriageable age as determined by law has the right to marry, and to establish a family as specified in law. The family, being the natural and fundamental unit of society, is entitled to special protection by society and the State.

(b) Children must be afforded special protection as specified in law in the event of a marital breakdown of the parents.

Special protection to
children, young,
elderly and

35. (a) Children and young people are entitled to special protection and special assistance from

disadvantaged
people

the family, the community and the State. Children and young people shall not be harmed, sexually abused, or discriminated against in any manner and shall be free from unsuited social and economic exploitation. No person shall obtain undue benefit from their labour.

(b) Elderly and disadvantaged persons are entitled to protection and special assistance from the family, the community and the State.

Right to education 36.

(a) Everyone has the right to education without discrimination of any kind.

(b) Primary and secondary education shall be freely provided by the State. It is imperative on parents and the State to provide children with primary and secondary education. Opportunity for higher education shall be generally accessible to all citizens.

(c) Education shall strive to inculcate obedience to Islam, instil love for Islam, foster respect for human rights, and promote understanding, tolerance and friendship among all people.

Right to work 37.

(a) Every citizen has the right to engage in any employment or occupation.

(b) Everyone is entitled to just and safe conditions of work, fair wages, equal remuneration for work of equal value, and equal opportunity for promotion.

(c) Everyone has the right to rest and leisure, including limits on hours of work and periodic holidays with pay.

(d) Everyone has the right to spend time at rest and leisure. In order to provide this right to each employed person, the maximum number of working hours have to be determined as well as the length of paid holidays.

Right of pension 38. Every one engaged in employment with the State shall have the right of pension as provided by law.

Right to participate
in cultural life 39. (a) Everyone has the right to participate in the cultural life of the nation, and to benefit from literary and artistic endeavours.

(b) The State shall promote education, culture, literature and the arts, within the limits of its resources.

Right to acquire and
hold property 40. (a) Every citizen has the right to acquire, own, inherit, transfer or otherwise transact of such property.

(b) Private property shall be inviolable, and may only be compulsorily acquired by the State for the public good, as expressly prescribed by law, and as authorised by order of the court. Fair and adequate compensation shall be paid in all cases, as determined by the court.

(c) Nothing in this Article prevents any law authorising a court to order the forfeiture (without the giving of any compensation) of illegally acquired or possessed property, or enemy property.

(d) Property of a person shall not be forfeited in substitution for any offence.

Freedom of
movement and
establishment

41.

(a) Every citizen has the freedom to enter, remain in and leave the Maldives, and to travel within the Maldives.

(b) Every citizen has the right to move to, and take up residence on, any inhabited island of the Maldives.

(c) Every citizen shall have equal access to the receipt of rights and benefits from any island where he has established residency.

Fair and transparent
hearings

42.

(a) In the determination of one's civil rights and obligations or of any criminal charge, everyone is entitled to a fair and public hearing within a reasonable time by an independent court or tribunal established by law.

(b) All judicial proceedings in the Maldives shall be conducted with justice, transparency and impartiality.

(c) Trials of any matter shall be held publicly, but the presiding judge may exclude the public from all or part of a trial in accordance with democratic norms:

1. in the interests of public morals, public order or national security;
2. where the interest of juveniles or the victims of a crime so require; or
3. in other special circumstances where publicity would prejudice the interests of justice.

- (d) All judgements or orders of a Court shall be pronounced publicly, unless the Court specifically orders otherwise for the reasons stipulated in article (c). All publicly pronounced judgements or orders shall be available to the public.
- Fair administrative action **43.** (a) Everyone has the right to administrative action that is lawful, procedurally fair, and expeditious.
- (b) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.
- (c) Where the rights of a person, a group or community has been adversely affected by administrative action, every such person, group or every person who may be directly affected by such action has the right to submit the matter to court.
- Personal liability **44.** The application of the criminal law or criminal procedure, including the conduct of investigations, criminal proceedings and enforcement of sentences as provided by law, shall extend to the accused person only and shall not affect the legal rights or obligations of any other person.
- No unlawful arrest or detention **45.** Everyone has the right not to be arbitrarily detained, arrested or imprisoned except as provided by law enacted by the People's Majlis in accordance with Article 16 of this Constitution.
- Power of arrest and detention **46.** No person shall be arrested or detained for an offence unless the arresting officer observes the offence being committed, or has reasonable and probable grounds or evidence to believe the person has committed an offence or is about to commit an offence, or under the

authority of an arrest warrant issued by the court.

- Search and seizure 47. (a) No person shall be subject to search or seizure unless there is reasonable cause.
- (b) Residential property shall be inviolable, and shall not be entered without the consent of the resident, except to prevent immediate and serious harm to life or property, or under the express authorisation of an order of the Court.

- Rights on arrest or detention 48. Everyone has the right on arrest or detention:
- (a) to be informed immediately of the reasons therefore, and in writing within at least twenty four hours;
- (b) to retain and instruct legal counsel without delay and to be informed of this right, and to have access to legal counsel facilitated until the conclusion of the matter for which he is under arrest or detention;
- (c) to remain silent, except to establish identity, and to be informed of this right;
- (d) to be brought within twenty four hours before a Judge, who has power to determine the validity of the detention, to release the person with or without conditions, or to order the continued detention of the accused.

- Release of accused 49. No person shall be detained in custody prior to sentencing, unless the danger of the accused absconding or not appearing at trial, the protection of the public, or potential interference with witnesses or

evidence dictate otherwise. The release may be subject to conditions of bail or other assurances to appear as required by the court.

Prompt investigation
and prosecution

50. After notice of an alleged offence has been brought to the attention of the investigating authorities, the matter shall be investigated promptly, and where warranted, the Prosecutor General shall lay charges as quickly as possible.

Rights of the accused

51. Everyone charged with an offence has the right:

- (a) to be informed without delay of the specific offence in a language understood by the accused;
- (b) to be tried within a reasonable time;
- (c) not to be compelled to testify;
- (d) to an interpreter to be provided by the State where he does not speak the language in which the proceedings are conducted, or is deaf or mute;
- (e) to have adequate time and facilities for the preparation of his defence and to communicate with and instruct legal counsel of his own choosing;
- (f) to be tried in person, and to defend himself through legal counsel of his own choosing;
- (g) to examine the witnesses against him and to obtain the attendance and examination of

witnesses;

(h) to be presumed innocent until proven guilty beyond a reasonable doubt.

Confessions and
illegal evidence

52. No confession shall be admissible in evidence unless made in court by an accused who is in a sound state of mind. No statement or evidence must be obtained from any source by compulsion or by unlawful means and such statement or evidence is inadmissible in evidence.

Assistance of legal
counsel

53. (a) Everyone has the right to retain and instruct legal counsel at any instance where legal assistance is required.

(b) In serious criminal cases, the State shall provide a lawyer for an accused person who cannot afford to engage one.

No degrading
treatment or torture

54. No person shall be subjected to cruel, inhumane or degrading treatment or punishment, or to torture.

No imprisonment
for non-fulfilment of
contractual
obligation

55. No person shall be imprisoned on the ground of non-fulfilment of a contractual obligation.

Right to appeal

56. Everyone related to a matter has the right to appeal a conviction and sentence, or judgement or order in a criminal or civil matter.

Humane treatment
of arrested or
detained persons

57. Everyone deprived of liberty through arrest or detention as provided by law, pursuant to an order of the court, or being held in State care for social reasons, shall be treated with humanity and with respect for the inherent dignity of the human person. A person may be deprived of the rights or freedoms specified in this Chapter only to the extent required for the purpose for which he is deprived of his liberty.

Compensation

58. Everyone who has been arrested or detained without legal authority or justification has the right to be compensated.

Retrospective
legislation

59. (a) No person shall be found guilty of any act or omission which did not constitute an offence under Islamic Shari'ah or law at the time committed. Nor shall a more severe penalty be imposed than the one applicable at the time the offence was committed. If the punishment for an offence has been reduced between the time of commission and the time of sentencing, the accused is entitled to the benefit of the lesser punishment.

(b) This Article shall not prejudice the trial and punishment of any person for any act which was criminal according to international law.

Prohibition of
double jeopardy

60. (a) If an accused is acquitted of an offence by a court, he shall not be tried again for the same or substantially the same offence. If an accused is found guilty and punished for an offence he shall not be tried or punished again for the same or substantially the same offence.

(b) The principle stated in article (a) does not apply to appeals relating to the offence.

Publication of acts
and regulations

61. (a) All statutes, regulations, government orders requiring compliance by citizens and government policies shall be published and made available to the public.

(b) No person may be subjected to any punishment except pursuant to a statute or pursuant to a regulation made under authority of a statute, which has been made available to the public and which defines the criminal offence and the

punishment for commission of the offence.

(c) All information concerning government decisions and actions shall be made public, except information that is declared to be State secrets by a law enacted by the People's Majlis.

(d) Every citizen has the right to obtain all information possessed by the Government about that person.

Retention of other
rights

62.

(a) The enumeration of rights and freedoms in this Chapter are guaranteed equally to female and male persons.

(b) The enumeration of rights and freedoms individually in this Chapter shall not be construed to deny or negate other rights retained by the people which are not specified in this Chapter.

Voidance of laws
inconsistent with
fundamental rights

63.

Any law or part of any law contrary to the fundamental rights or freedoms guaranteed by this Chapter shall be void or void to the extent of such inconsistency.

Non-compliance
with unlawful orders

64.

No employee of the State shall impose any orders on a person except under authority of a law. Everyone has the right not to obey an unlawful order.

Application to court
to obtain a remedy

65.

Anyone whose rights or freedoms, as guaranteed by this Chapter, have been infringed or denied may apply to a court to obtain a just remedy.

Voidance of laws
inconsistent with
rights and freedoms

66.

All existing statutes, regulations, decrees and notices inconsistent with the fundamental rights and freedoms provisions in this Chapter shall, to the extent of the inconsistency, become void on the commencement of this Constitution.

Responsibilities and
duties

67. The exercise and enjoyment of fundamental rights and freedoms is inseparable from the performance of responsibilities and duties, and it is the responsibility of every citizen:

- (a) to respect and protect the rights and freedoms of others;
- (b) to foster tolerance, mutual respect, and friendship among all people and groups;
- (c) to contribute to the well-being and advancement of the community;
- (d) to promote the sovereignty, unity, security, integrity and dignity of the Maldives;
- (e) to respect the Constitution and the rule of law;
- (f) to promote democratic values and practices in a manner that is not inconsistent with any tenet of Islam;
- (g) to preserve and protect the State religion of Islam, culture, language and heritage of the country;
- (h) to preserve and protect the natural environment, biodiversity, resources and beauty of the country and to abstain from all forms of pollution and ecological degradation;
- (i) to respect the national flag, state emblem and the national anthem.

Every person in the Maldives must also respect these

EXHIBIT 16



OFFICES *of* THE UNITED STATES ATTORNEYS

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Criminal Resource Manual 611 Interpol Red Notices

611 Interpol Red Notices

An Interpol Red Notice is the closest instrument to an international arrest warrant in use today. Interpol (the International Criminal Police Organization) circulates notices to member countries listing persons who are wanted for extradition. The names of persons listed in the notices are placed on lookout lists (e.g., NCIC or its foreign counterpart). When a person whose name is listed comes to the attention of the police abroad, the country that sought the listing is notified through Interpol and can request either his provisional arrest (if there is urgency) or can file a formal request for extradition.

Please be aware that if a Red Notice is issued, the prosecutor's office is obligated to do whatever work is required to produce the necessary extradition documents within the time limits prescribed by the controlling extradition treaty whenever and wherever the fugitive is arrested. Further, the prosecutor's office is obliged to pay the expenses pursuant to the controlling treaty. Those expenses, which can be quite high, will typically include the costs of translating the extradition documents and may include the costs of hiring local counsel to represent the United States. Further, these obligations, which remain until the fugitive is arrested or the Red Notice is withdrawn, may result in prosecutors who have succeeded the Assistant United States Attorney who originally requested the Red Notice having to prepare the documents and arrange for payment of hefty fees years after the fugitive originally fled from the United States. Therefore, it is important for prosecutors to make certain that the case is significant enough to warrant placing their offices under such a burden in deciding whether or not to request issuance of a Red Notice.

[cited in [USAM 9-15.635](#)]

◀ [Criminal Resource Manual 610
Deportations, Expulsions, Or Other
Extraordinary Renditions](#)

[up](#) [Criminal Resource Manual 612 Role Of The
Department Of State In Foreign Extradition
Requests](#) ▶

EXHIBIT 17

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At INTERPOL today, we have a global membership of 190 countries. Each country maintains a National Central Bureau (NCB), staffed by national law enforcement officers. It forms the link with INTERPOL's global network, enabling member countries to work together on cross-border investigations. NCBs are increasingly involved in shaping the Organization's direction.

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M

Macao (China) | Madagascar | Malawi | Malaysia | Maldives | Mali | Malta | Marshall Islands | Mauritania | Mauritius | Mexico | Moldova | Monaco | Mongolia | Montenegro | Montserrat (UK) | Morocco | Mozambique | Myanmar

N

Namibia | Nauru | Nepal | Netherlands | New Zealand | Nicaragua | Niger | Nigeria | Norway

O

Oman

P

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Qatar

R

Romania | Russia | Rwanda

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EXHIBIT 18

Organization from undertaking any intervention or activities of a political, military, religious or racial character.

Notices are processed in line with [INTERPOL's Rules on the Processing of Data](#), which ensure the legality and quality of information, and the protection of personal data.

The legal basis for a Red Notice is an arrest warrant or court order issued by the judicial authorities in the country concerned. Many of INTERPOL's member countries consider a Red Notice to be a valid request for provisional arrest.

Furthermore, INTERPOL is recognized as an official channel for transmitting requests for provisional arrest in a number of bilateral and multilateral extradition treaties, including the European Convention on Extradition, the Economic Community of West African States (ECOWAS) Convention on Extradition, and the United Nations Model Treaty on Extradition.

Diffusions

Similar to the Notice is another request for cooperation or alert mechanism known as a 'diffusion'. This is less formal than a notice but is also used to request the arrest or location of an individual or additional information in relation to a police investigation. A diffusion is circulated directly by an NCB to the member countries of their choice, or to the entire INTERPOL membership and is simultaneously recorded in INTERPOL's Information System.

terrorist fighters – INTERPOL Chief

16 February 2015     

Nepal's top wildlife criminal nabbed in Malaysia

29 January 2015     

Foreign fighter threat to Europe requires global response says INTERPOL Chief

24 December 2014     

Tanzanian police hold suspected Kenyan ivory smuggling ring leader targeted in INTERPOL operation

15 December 2014     

INTERPOL operation in Central America and the Caribbean nets almost 30 tonnes of drugs

25 November 2014     

Heads of INTERPOL and United Nations meet on global security challenges

25 September 2014     

INTERPOL global role against foreign terrorist fighters recognized in UN Resolution

14 September 2014     

INTERPOL condemns 'depraved' murder of British hostage by Islamic State group

12 September 2014     

International jewel thief wanted via INTERPOL nabbed by Swiss police

11 September 2014     

Terrorist suspect wanted by Algeria found in Malian jail following checks via INTERPOL

29 August 2014     

INTERPOL issues global alert for missing British boy

12 August 2014     

Albanian fugitive targeted by INTERPOL arrested in Ecuador

24 July 2014     

INTERPOL supports renewed campaign to track remaining Rwandan genocide fugitives

16 July 2014     

INTERPOL Nigeria escorts Nyanya bombing suspect extradited from Sudan





04 June 2014     

Innovation in biometric technology key in fighting transnational crime, says INTERPOL Chief





21 May 2014    
 'Wave of violence' in Nigeria
 condemned by INTERPOL Chief





30 April 2014    
 Criminal network involved in
 payment card fraud dismantled
 with INTERPOL support





14 April 2014    
 INTERPOL condemns Abuja
 terror 'slaughter'

05 March 2014    
 International collaboration via
 INTERPOL leads to arrest in
 Thailand of fugitive rapist

28 February 2014    
 Tackling drug trafficking
 across Middle East and North
 Africa focus of INTERPOL
 meeting

12 February 2014    
 Spanish police arrest 'Pink
 Panther' gang suspect in 2007
 Dubai mall robbery





14 January 2014    
 Qatar requests first INTERPOL
 notice for illicit trade offences

20 October 2013    
 Enhancing genocide, war
 crimes and crimes against
 humanity investigations focus
 of INTERPOL training





22 October 2013    
 Greek authorities ask
 INTERPOL to help identify
 unknown girl using DNA
 comparison

04 October 2013    
 Bahrain million dollar watch
 raid suspects arrested following
 issue of INTERPOL Red Notices

26 September 2013    
 INTERPOL issues Red Notice
 for arrest of Samantha
 Lewthwaite at Kenya's request

23 September 2013    
 Korean arrest of INTERPOL
 Red Notice subject major blow
 to Chinese organized crime

20 September 2013    
 Individual rights and police
 information sharing focus of
 INTERPOL and Fair Trials
 International meeting

12 July 2013    
 'Foreign fighters' threat focus
 of INTERPOL counterterrorism
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EXHIBIT 19

SELEZNEV Roman

Control No.: A-5063/7-2014

Requesting Country: UNITED STATES

File No.: 2014/40408

Date of Publication: 05 July 2014

CIRCULATION TO THE MEDIA (INCLUDING INTERNET) OF THE EXTRACTED
VERSION OF THE RED NOTICE AS PUBLISHED ON INTERPOL'S PUBLIC WEB
SITE: NO



FUGITIVE WANTED FOR PROSECUTION

1. IDENTITY PARTICULARS



Family Name: SELEZNEV

Family Name in the Original Script or Chinese Telegraphic Code: N/A

Family Name at Birth: SELEZNEV

Forenames: Roman

Forenames in the Original Script or Chinese Telegraphic Code: N/A

Date and Place of Birth: 23 July 1984 - Russia

Sex: Male

Nationality: RUSSIAN (CONFIRMED)

Also Known As / Other Dates of Birth Used:

Family name Forenames

"BANDYSL164"

"BULBA"

"NCUX"

"SHMAK"

"SMAUS"

"TRACK2"

"ZAGREB"

IVANOV Roman

SAMVELICH Ruben

SELEZNEV Roman V

SELEZNEV Roman Valerevich

SELEZNEV Valery

Marital Status: N/A

Father's Family Name and Forenames: N/A

Mother's Maiden Name and Forenames: N/A

Occupation: Computer and network security/hacking

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Languages Spoken: Russian, English

Regions/Countries Likely to Be Visited: China, Indonesia (Bali), Indonesia (Jakarta), Korea (Republic of), Maldives, Russia, Thailand, Eastern Europe, Baltic Region

Additional Information: SELEZNEV is a computer hacker and vendor of stolen credit card numbers. It is very likely that SELEZNEV is in possession of a laptop or other computer storage devices, and the data on those devices is likely to be encrypted. SELEZNEV Russian passport number may be 640410831, 640610831, or partial number 0410831, and his phone number of 79024835285.

Identity Documents:

Russian passport No. 640410831, issued on 31 December 2009 (Expires on 31 December 2014)

Russian passport No. 623910597

DNA Code: N/A

Description:

Height: 178 cm

Weight: 85 kg

Hair: Brown

Eyes: Brown

Build: Medium

Distinguishing Marks and Characteristics: SELEZNEV's height and weight are estimated, and he has a mole below his left eye. SELEZNEV may have substantial scarring or disfigurement to one of his hands as a result of being caught in an explosion in 2011.

2. JUDICIAL INFORMATION

The summary of facts and judicial information reflect the original request from the NCB and are not modified by the General Secretariat.

Summary of Facts of the Case: UNITED STATES, District of Nevada and western district of Washington: On 22 November 2005

Roman SELEZNEV is wanted in the District of Nevada and the Western District of Washington for his role in a criminal organization that trafficked in stolen credit card data obtained through computer hacking and using computer viruses. From November 2005 to June 2011, in Nevada and elsewhere, the organization was an ongoing racketeering enterprise committing identity theft and credit and debit card fraud. The organization created a secret marketplace on the Internet, for the distribution of victims' stolen personal and financial means of identification. From October 2009 to February 2011, SELEZNEV was involved with network intrusions of the computer systems of retail businesses in Washington, and elsewhere. SELEZNEV caused malicious software to be downloaded to computer systems, stole credit card numbers of the businesses' customers, and sold those stolen credit cards on "carding" websites, causing financial losses through the fraudulent use of the credit card accounts' information.

Additional Facts of the Case: Roman SELEZNEV is charged in the District of Nevada for his criminal activities relating to the "carder.su" criminal organization that trafficked in stolen credit card data, and counterfeit identifications, laundered money, and committed computer crimes, including hacking and using computer viruses. From 22 November 2005 to 30 June 2011, in the District of Nevada and elsewhere, the organization was an ongoing racketeering enterprise whose purpose was to enrich its members by committing identity theft and credit and debit card fraud. The organization created a secret marketplace on the Internet, called a forum, for the distribution of victims' stolen personal and financial means of identification in order for the enterprise to protect itself and its members from detection, apprehension and prosecution by law enforcement. SELEZNEV's role in the organization was a vendor in the carder.su organization dumps. SELEZNEV sells members such a large volume of product that he has created an automated website, which he advertises on the carder.su organizations websites. SELEZNEV's automated website allows members to log into and purchase stolen and otherwise stolen credit card account data without personal interaction with SELEZNEV. SELEZNEV's website has a simple interface that allows members to search for the particular type

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of credit card information they want to buy, and the number of accounts they wish to purchase to their "shopping cart" and then check out. Payment of funds is automatically deducted from the already-established account funded through an on-line digital currency payment system. Upon checking out, the purchased credit card account data is available for members to download. SELEZNEV sells each stolen account number for approximately \$20 USD. On two different occasions in January and May 2011, SELEZNEV possessed a total of at least 129 counterfeit and unauthorized access devices, such as credit cards. As of June 2011, the criminal organization had at least 7,000 members worldwide, and was responsible for at least \$50 million USD in losses as a result of their criminal enterprise.

From 2 October 2009 to 22 February 2011, SELEZNEV was involved with network intrusions, or "hacks," of the computer systems of retail businesses in the Western District of Washington, and elsewhere. SELEZNEV caused malicious software, or "malware" to be downloaded to the computer systems compromised by the hacks, made use of that malware to steal the credit card numbers of the customers of the compromised businesses, and sold those stolen credit cards on "carding" websites with the knowledge and the intent that they will be used by those who bought them for fraudulent transactions, causing financial losses to numerous banks that issued the credit card accounts. A "carding" website is a site that sells stolen credit card numbers to others so they can in turn use them in fraudulent criminal activity.

SELEZNEV was identified with the online nicknames "nCuX" and "Track2," and was one of the most prolific worldwide sellers of stolen credit card numbers through online carding sites during the time frame of 2002 through 2009. In 2007, SELEZNEV ordered a device to re-encode credit card data to magnetic strips on credit cards. This device is used to transfer stolen credit card numbers to blank credit cards, and use the stolen numbers.

In May 2010, the computer system at a restaurant in Idaho was hacked and credit card information was stolen and sent to an Internet Protocol (IP) address of a computer server located in Russia. Shortly thereafter, individuals were arrested in Ohio using credit card numbers stolen during the intrusion of the computer system in Idaho. The computer seized from the Ohio suspects indicated that they had purchased the stolen credit card numbers from SELEZNEV's carding website. In October, 2010, there was another computer network intrusion at a restaurant in Seattle, Washington, which was determined to be connected to the Idaho intrusion, because the malware was downloaded from the same Russian server. The investigation revealed that the malware and server in Russia used in the Idaho and Washington intrusions were used in further intrusions into businesses throughout the U.S. that had credit card data stolen from their systems. Western Union records were obtained showing that SELEZNEV had received transfers of money in Indonesia in 2010.

In one of the intrusions the stolen data was transmitted to an IP address of a computer server located in Virginia for which activation records were discovered in an e-mail account belonging to SELEZNEV. The Virginia server was analyzed by U.S. law enforcement, and found to contain evidence of intrusions into the computer systems of over 100 U.S. businesses infected with the same type of malware that had been downloaded from the same Russian server, and the theft from them of over 180,000 credit card numbers. The Virginia server housed the same type of "hacking programs" that had been used on the victim businesses and the type of software needed to deliver and upload the stolen credit card numbers to the Virginia server. This particular server was also used to make an airline reservation for SELEZNEV to travel between Bali, Indonesia and Singapore. Another Virginia server associated with an e-mail account belonging to SELEZNEV was searched and found to contain e-mails from 12 December 2009, to 11 February 2011, regarding the lease and use of the Russian server used in the computer intrusions in Idaho, Washington, and elsewhere, tying SELEZNEV directly to the hacks and malware installation on the victim businesses' systems.

The fraudulent use of the stolen credit card numbers in this case has caused losses of millions of dollars to the financial institutions that issued those accounts. The confirmed losses to financial institutions due to the fraudulent use of credit card numbers stolen just from the Seattle restaurant is alone approximately \$6 million USD. The theft and fraudulent use of the stolen credit card numbers have also damaged the personal identities and financial integrity of the individuals to whom the credit card numbers were assigned.

Accomplices: N/A

FUGITIVE WANTED FOR PROSECUTION

ARREST WARRANT OR JUDICIAL DECISION 1

Charge: 1) Bank Fraud (5 counts)

2) Intentional Damage to a Protected Computer (8 counts)

3) Obtaining Information from a Protected Computer (8 counts)

4) Possession of Fifteen or More Unauthorized Access Devices

5) Trafficking in Unauthorized Access Devices (2 counts)

6) Aggravated Identity Theft (5 counts)

Law Covering the Offence: 1) Title 18, U.S. Code, Sections 1344 and 2

2) Title 18, U.S. Code, Sections 1030(a)(5)(A), 1030(c)(4)(B)(i) and 2

3) Title 18, U.S. Code, Sections 1030(a)(2), 1030(c)(2)(B)(ii) and 2

4) Title 18, U.S. Code, Sections 1029(a)(3), 1029(c)(1)(A)(i), and 2

5) Title 18, U.S. Code, Sections 1029(a)(2), 1029(c)(1)(A)(i) and 2

6) Title 18, U.S. Code, Sections 1028A(a)(1) and 2

Maximum Penalty Possible: 30 years imprisonment 1) 30 years imprisonment per count

2) 10 years imprisonment per count

3) 5 years imprisonment per count

4) 10 years imprisonment

5) 10 years imprisonment per count

6) 2 years imprisonment per count

Time Limit for Prosecution or Expiry Date of Arrest Warrant: None

Arrest Warrant or Judicial Decision Having the Same Effect: No. CR11-70 RAJ, issued on 16 March 2011 by the U.S. District Court, Western District of Washington in United States

Name of signatory: James Kelly, Deputy Clerk

Copy of Arrest Warrant Available at the General Secretariat in the Language Used by the Requesting Country: No

ARREST WARRANT OR JUDICIAL DECISION 2

Charge:

1) Participate in a Racketeer Influenced Corrupt Organization (RICO)

2) Conspiracy to Engage in a Racketeer Influenced Corrupt Organization (RICO)

3) Possession of Fifteen or More Counterfeit and Unauthorized Access Devices (2 counts)

Law Covering the Offence: 1) Title 18, U.S. Code, Section 1962(c)

2) Title 18, U.S. Code, Section 1962(d)

3) Title 18, U.S. Code, Section 1029(a)(3)

Maximum Penalty Possible: 20 years imprisonment 1) 20 years imprisonment

2) 20 years imprisonment

3) 10 years imprisonment per count

Time Limit for Prosecution or Expiry Date of Arrest Warrant: None

Arrest Warrant or Judicial Decision Having the Same Effect: No. 2:12-cr-004, issued on 10 January 2012 by the U.S. District Court, District of Nevada in United States

Name of signatory: Lance S. Wilson, Clerk

Copy of Arrest Warrant Available at the General Secretariat in the Language Used by the Requesting Country: No

3. ACTION TO BE TAKEN IF TRACED

LOCATE AND ARREST WITH A VIEW TO EXTRADITION

The country at the request of which the present notice has been published has given assurances that extradition will be sought upon arrest of the person, in conformity with its national laws and/or the applicable bilateral and multilateral treaties.

PROVISIONAL ARREST

For the country at the request of which the present notice has been published, this red notice is to be treated as a formal request for provisional arrest. Please apply provisional arrest, in conformity with national laws and/or the applicable bilateral and multilateral treaties.

Immediately inform NCB WASHINGTON United States of America (NCB reference: 20121243224 of 03 July 2014) and the ICPO-INTERPOL General Secretariat that the fugitive has been found.

EXHIBIT 20

MUTUAL LEGAL ASSISTANCE

**Treaty Between the
UNITED STATES OF AMERICA
and the RUSSIAN FEDERATION**

Signed at Moscow June 17, 1999

with

Related Notes



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . . the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

RUSSIAN FEDERATION

Mutual Legal Assistance

Treaty signed at Moscow June 17, 1999;
Transmitted by the President of the United States of America
to the Senate February 10, 2000 (Treaty Doc. 106-22,
106th Congress, 2d Session);
Reported favorably by the Senate Committee on Foreign Relations
December 12, 2001 (Senate Executive Report No. 107-3,
107th Congress, 1st Session);
Advice and consent to ratification by the Senate
December 19, 2001;
Ratified by the President January 18, 2002;
Ratified by the Russian Federation November 3, 2000;
Ratifications exchanged at Washington January 31, 2002;
Entered into force January 31, 2002.
With related notes.

**TREATY BETWEEN
THE UNITED STATES OF AMERICA
AND
THE RUSSIAN FEDERATION
ON
MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**

The United States of America and the Russian Federation (hereinafter referred to as "the Parties"),

Striving to broaden and deepen American-Russian cooperation to prevent and fight against crime, and

Reaffirming their determination to enhance legal assistance in criminal matters,

Have agreed as follows:

ARTICLE 1

GENERAL PROVISIONS

1. The Parties shall provide to each other, in accordance with this Treaty, comprehensive mutual legal assistance in criminal matters.
2. For the purposes of this Treaty, legal assistance in criminal matters shall mean any assistance provided by the Parties in connection with: prevention, suppression, and investigation of crimes; criminal prosecutions; and other proceedings related to such criminal matters.
3. Legal assistance shall be provided in accordance with the provisions of this Treaty where the conduct that is the subject of the request constitutes a crime under the laws of both Parties. The Requested Party may, in its discretion, also provide legal assistance where the conduct that is the subject of the request would not constitute a crime under the laws of the Requested Party.
4. This Treaty is intended solely for cooperation and legal assistance between the Parties. The provisions of this Treaty shall not give rise to a right on the part of any other persons to obtain evidence, to have evidence excluded, or to impede the execution of a request.
5. For purposes of this Treaty, the term "person" shall mean both individuals and legal entities in the following articles: Article 1(4), Article 2(4), Article 5(3) subparagraphs 1-5, Article 10(1), Article 14, and Article 15(2).

ARTICLE 2

SCOPE OF LEGAL ASSISTANCE

Legal assistance under this Treaty shall include:

- (1) obtaining testimony and statements;
- (2) providing documents, records, and other items;
- (3) serving documents;
- (4) locating and identifying persons and items;
- (5) executing requests for searches and seizures;
- (6) transferring persons in custody for testimony or other purposes under this Treaty;
- (7) locating and immobilizing assets for purposes of forfeiture, restitution, or collection of fines; and
- (8) providing any other legal assistance not prohibited by the laws of the Requested Party.

ARTICLE 3

**CENTRAL AUTHORITIES AND PROCEDURES
FOR COMMUNICATIONS**

1. Each Party shall implement the provisions of this Treaty, including the making and receiving of requests, through its Central Authority.
2. For the United States of America, the Central Authority shall be the Attorney General or persons designated by the Attorney General. For the Russian Federation, the Central Authority shall be the Office of the Procurator General of the Russian Federation or persons designated by the Procurator General.
3. The Central Authorities shall communicate directly with one another for the purposes of this Treaty and may agree upon such practical measures as may be necessary to facilitate the implementation of this Treaty.

ARTICLE 4

DENIAL OF LEGAL ASSISTANCE

1. The Central Authority of the Requested Party may deny legal assistance if:
 - (1) the request relates to a crime under military law that is not a crime under general criminal law;
 - (2) the execution of the request would prejudice the security or other essential interests of the Requested Party; or
 - (3) the request does not conform to the requirements of this Treaty.
2. The Requested Party shall not decline execution of a request on the ground of bank secrecy.
3. Before denying legal assistance pursuant to paragraph 1 of this Article, the Central Authority of the Requested Party shall consult with the Central Authority of the Requesting Party to consider whether legal assistance can be given subject to such conditions as it deems necessary. If the Requesting Party accepts legal assistance subject to these conditions, it shall comply with the conditions.
4. If the Central Authority of the Requested Party denies legal assistance, it shall inform the Central Authority of the Requesting Party of the reasons for the denial.

ARTICLE 5

FORM AND CONTENTS OF REQUESTS FOR LEGAL ASSISTANCE

1. A request for legal assistance shall be in writing, but in urgent situations the Central Authority of the Requested Party may accept a request in another form. If the request is not in writing, the request shall be confirmed in writing within ten days of its receipt by the Requested Party unless the Central Authority of the Requested Party agrees otherwise.
2. The request shall include:
 - (1) the identity of the authority on whose behalf the request is made;
 - (2) a description of the facts and circumstances of the case;
 - (3) the text of the law under which the conduct constitutes a crime;
 - (4) a description of the legal assistance sought; and
 - (5) a statement of the purpose for which the legal assistance is sought.
3. To the extent necessary and possible, a request shall also include:
 - (1) information on the identity and suspected location of a person to be located;
 - (2) information on the identity and location of a person to be served, that person's relationship to the proceeding, and the manner in which service is to be made;
 - (3) information on the identity and location of a person from whom evidence is sought;
 - (4) a list of questions to be asked of a person identified in the request;
 - (5) a precise description of the place or person to be searched and of the item to be seized;
 - (6) a description of procedures for the execution of the request;
 - (7) information as to the allowances and expenses to which a person asked to appear in the territory of the Requesting Party will be entitled; and
 - (8) any other information that may be brought to the attention of the Central Authority of the Requested Party to facilitate the execution of the request.
4. The request shall be prepared and signed in accordance with the regulations of the Requesting Party.

ARTICLE 6

LANGUAGE

Except as otherwise agreed by the Central Authorities of the Parties, requests for legal assistance and documents attached thereto shall be accompanied by a translation into the language of the Requested Party.

ARTICLE 7

EXECUTION OF REQUESTS

1. The Central Authority of the Requested Party shall promptly execute the request or shall transmit it to the authority having jurisdiction to do so. The competent authorities of the Requested Party shall do everything in their power to execute the request in a timely manner.
2. The Central Authority of the Requested Party shall represent the interests of the Requesting Party in executing the request.
3. Requests shall be executed in accordance with the laws of the Requested Party except if this Treaty provides otherwise. The competent authorities of the Requested Party shall have the authority to issue subpoenas, search warrants, or other orders necessary for the execution of requests. Except if prohibited by its laws, the Requested Party shall follow procedures specified in the request.
4. If the Central Authority of the Requested Party considers that execution of a request will interfere with a criminal investigation, criminal prosecution, or proceeding related to a criminal matter ongoing in that State, it may postpone execution, or make execution subject to conditions determined to be necessary after consultations with the Central Authority of the Requesting Party. If the Requesting Party accepts the legal assistance subject to these conditions, it shall comply with the conditions.
5. The Requested Party shall use its best efforts to keep confidential a request and its contents if so requested by the Central Authority of the Requesting Party. If execution of the request would require a breach of this confidentiality, the Central Authority of the Requested Party shall so inform the Central Authority of the Requesting Party, which shall then determine whether the request should be executed under such circumstances.
6. The Central Authority of the Requested Party shall respond to inquiries by the Central Authority of the Requesting Party concerning progress toward execution of the request.
7. Upon request of the Central Authority of the Requesting Party, the Central Authority of the Requested Party shall furnish information in advance about the date and place of the execution of a request. During the execution of a request, the Requested Party shall permit the presence of such persons as are specified therein.
8. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the outcome of the execution of the request. If the request is not executed, or if execution is delayed or postponed, the Central Authority of

the Requested Party shall inform the Central Authority of the Requesting Party of the reasons for non-execution, delay, or postponement.

ARTICLE 8

COSTS

1. The Requested Party shall pay all costs relating to the execution of the request, except that the Requesting Party shall pay for the fees of experts, the costs of translation, interpretation, and transcription, and the allowances and expenses related to travel of persons pursuant to Articles 11 and 12 of this Treaty.
2. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Central Authorities of the Parties shall consult to determine the terms and conditions under which the requested legal assistance can be provided.

ARTICLE 9

LIMITATIONS ON USE OF THE RESULTS OF EXECUTED REQUESTS

1. The Central Authority of the Requested Party may require that the Requesting Party not use the results of the execution of a request obtained under this Treaty for purposes other than those described in the request without the prior consent of the Central Authority of the Requested Party. In such cases, the Requesting Party shall comply with such limitations on use of the results of the executed request.
2. Nothing in this Article shall preclude the use or disclosure of the results of an executed request to the extent that there is an obligation to do so under the Constitution of the Requesting Party in a criminal prosecution. The Central Authority of the Requesting Party shall notify the Central Authority of the Requested Party in advance of any such possible or proposed use or disclosure.
3. The results of an executed request that have been used for the purpose for which they were provided and, in the course of such use, have been made public in the Requesting Party in accordance with this Treaty may thereafter be used for any purpose.

ARTICLE 10

OBTAINING TESTIMONY AND EVIDENCE IN THE REQUESTED PARTY

1. A person requested to testify and produce documents, records, or items in the Requested Party shall be summoned, if necessary by subpoena or order, to appear and testify and produce such documents, records, or items, in accordance with the requirements of the law of the Requested Party.
2. In accordance with procedures used in the Requested Party, persons present at the execution of a request shall be permitted to pose questions directly or to formulate

questions that shall be posed to the person being questioned, and to make a verbatim transcript of the proceeding using, if necessary, technical means.

3. If the person referred to in paragraph 1 of this Article asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting Party, the evidence shall nonetheless be taken and the claim made known to the Requesting Party for resolution by the authorities of the Requesting Party.

ARTICLE 11

OBTAINING TESTIMONY IN THE REQUESTING PARTY

1. When the Requesting Party requests the appearance of a person in its territory, the Requested Party shall invite the person to appear before the appropriate authority in the Requesting Party. The Requesting Party shall indicate the extent to which the expenses and allowances will be paid. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the response of the person. A person who agrees to appear may ask that the Requesting Party advance money to cover these expenses. This advance may be provided through the Embassy or a consulate of the Requesting Party.

2. A person appearing in the Requesting Party pursuant to this Article shall not be subject to service of process, or be detained or subjected to any restriction of personal liberty, by reason of any acts or convictions that preceded the person's departure from the Requested Party. If such guarantee cannot be provided for any reason, the Central Authority of the Requesting Party shall indicate this in the request in order to inform the invited person and to allow that person to decide whether to appear taking these circumstances into account.

3. The safe conduct provided for by this Article shall cease seven days after the Central Authority of the Requesting Party has notified the Central Authority of the Requested Party that the person's presence is no longer required, or if the person has left the Requesting Party and voluntarily returned to it. The Central Authority of the Requesting Party may, in its discretion, extend this period up to fifteen days if it determines that there is good cause to do so.

ARTICLE 12

TRANSFER OF PERSONS IN CUSTODY

1. A person in the custody of either Party whose presence in the other Party is sought for purposes of legal assistance under this Treaty shall be transferred from the sending Party to the receiving Party for that purpose if the person consents and if the Central Authorities of both Parties agree.

2. For the purposes of this Article:

- (1) the receiving Party shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorized by the sending Party;**
- (2) the receiving Party shall return the person transferred to the custody of the sending Party as soon as circumstances permit or as otherwise agreed by both Central Authorities;**
- (3) the receiving Party shall not require the sending Party to initiate extradition proceedings for the return of the person transferred;**
- (4) the person transferred shall receive credit for service of the sentence imposed in the sending Party for time served in the custody of the receiving Party; and**
- (5) where the sentence imposed expires, or where the sending Party advises the receiving Party that the transferred person is no longer required to be held in custody, that person shall be treated as a person invited pursuant to Article 11 or returned to the sending Party.**

ARTICLE 13

PRODUCTION OF OFFICIAL RECORDS

- 1. Upon request, the Requested Party shall provide the Requesting Party with copies of publicly available records, including documents or information of any nature and in any form in the possession of an executive, legislative, or judicial authority in the Requested Party.**
- 2. The Requested Party may provide copies of any records, including documents or information of any nature and in any form that are in the possession of an executive, legislative, or judicial authority in that Party, but that are not publicly available, but only to the same extent and under the same conditions as such records would be available to the competent authorities of that Party. The Requested Party may in its discretion deny a request pursuant to this paragraph entirely or in part.**

ARTICLE 14

**LOCATION OR IDENTIFICATION OF
PERSONS AND ITEMS**

If the Requesting Party seeks the location or identity of persons or information about items in the Requested Party, the Requested Party shall use its best efforts to execute the request.

ARTICLE 15

SERVICE OF DOCUMENTS

1. The Requested Party shall use its best efforts to effect service of documents pursuant to a request.
2. The Requesting Party shall transmit any request for the service of a document requiring the appearance of a person before a competent authority in the Requesting Party a reasonable time before the scheduled appearance.
3. The Requested Party shall return to the Requesting Party a proof of service in the manner specified in the request.

ARTICLE 16

SEARCH AND SEIZURE

1. The Requested Party shall execute a request for the search, seizure, and transfer of any item to the Requesting Party if the request includes the information justifying such action under the laws of the Requested Party.
2. If requested, every official of the Requested Party who has had custody of a seized item shall certify the identity of the item, the continuity of its custody, and the integrity of its condition.
3. The Requested Party may require that the Requesting Party agree to the terms and conditions deemed necessary to protect third party interests in the item to be transferred.

ARTICLE 17

TRANSFER OF DOCUMENTS, RECORDS, AND OTHER ITEMS

1. When a request for legal assistance concerns the transfer of documents or records, the Requested Party shall transfer true copies thereof, unless the Requesting Party expressly requests the originals, in which case the Requested Party shall make every effort to comply with the request.
2. Insofar as not prohibited by its laws, the Requested Party shall transfer documents, records, or other items in such manner or accompanied by such certification as may be requested by the Requesting Party in order to make them admissible according to the law of the Requesting Party. For this purpose, the Central Authorities of the Parties shall exchange information pursuant to Article 3(3) with respect to the requirements for admissibility in their respective legal systems. Documents, records, and other items transferred as requested under this paragraph shall require no further certification to make them admissible.

3. The Central Authority of the Requested Party may require that the Central Authority of the Requesting Party return, as soon as possible, any documents, records, or other items furnished to it in execution of a request under this Treaty.

ARTICLE 18

PROCEEDS AND INSTRUMENTALITIES OF CRIME

1. The Parties, in accordance with their laws, shall assist each other in locating, immobilizing, and seizing proceeds, including earnings from, or that are the result of, criminal activities, as well as instrumentalities of crime, for the purpose of: forfeiture; restitution to victims of crime; and collection of fines imposed pursuant to judicial decisions in criminal matters.
2. If the Central Authority of one Party becomes aware that proceeds and instrumentalities of crime that may be subject to forfeiture are located in the territory of the other Party, it may so inform the Central Authority of the other Party so that the other Party may take appropriate measures under paragraph 3 of this Article. The Central Authority receiving the information shall notify the Central Authority providing the information of the action taken.
3. The Party that has immobilized, seized, or forfeited the proceeds and instrumentalities of crime shall dispose of them in accordance with its laws. That Party shall transfer all or part of such assets, or the proceeds of their sale, to the other Party, including for the purpose of forfeiture and restitution (which includes returning them to the rightful owner) insofar as permitted by its laws and to the extent it deems it appropriate and within the time frame and under the conditions it deems acceptable.

ARTICLE 19

CONSULTATION

The Central Authorities shall consult, at times mutually agreed to by them, to promote the most effective use of this Treaty.

ARTICLE 20

SCOPE OF APPLICATION

This Treaty shall apply to any requests presented after its entry into force even if the relevant acts or omissions occurred before that date.

ARTICLE 21

OTHER LEGAL BASES FOR COOPERATION

The provisions in this Treaty shall not prevent either of the Parties from cooperating and from granting legal assistance in accordance with the provisions of other applicable international treaties and agreements, national laws, and practices.

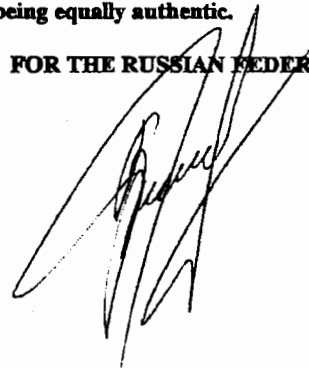
ARTICLE 22

ENTRY INTO FORCE AND TERMINATION

1. This Treaty shall be subject to ratification, and shall enter into force upon the exchange of the instruments of ratification, which shall take place as soon as possible.
2. Upon entry into force of this Treaty, the Agreement between the Government of the United States of America and the Government of the Russian Federation on Cooperation in Criminal Matters, signed on June 30, 1995, shall no longer be in force.
3. Either Party may terminate this Treaty by means of written notice to the other Party through the diplomatic channel. Termination shall take effect six months following the date of receipt of such notification.

DONE at *Moscow*, this *17th* day of *June*, 1999, in duplicate, in the English and Russian languages, both texts being equally authentic.

FOR THE UNITED STATES OF AMERICA: FOR THE RUSSIAN FEDERATION:

A handwritten signature in black ink, appearing to read "James F. Collins", written over a horizontal line.A handwritten signature in black ink, appearing to read "Igor Ivanov", written over a horizontal line.

EMBASSY OF THE
UNITED STATES OF AMERICA

LES/063

Moscow, June 17, 1999

Excellency:

I have the honor to refer to the treaty between the United States of America and the Russian Federation on Mutual Legal Assistance in Criminal Matters (the "Treaty"), signed on this date.

In connection with the treaty, my government notes that during its negotiation the United States delegation agreed to delete from Article 4(1) its proposal for the inclusion of an express reference to a "political offense" exception among the bases for denial of assistance under the treaty. In so doing, the United States took into account the view of the Russian delegation that the term "political offense" is not used in Russian law and that Article 4(1) (2) of the treaty provided an adequate basis upon which to deny assistance requests in cases the United States would consider "political offenses." Article 4(1) (2) permits each party to deny assistance if the execution of the request would prejudice the "security or other essential interests" of the requested party. I hereby confirm that it is the view of the United States that Article 4(1) (2) is sufficient to meet the

His Excellency

Igor Ivanov,

Minister of Foreign Affairs,

The Russian Federation.

- 2 -

concerns of the United States in this area, and the United States will implement the treaty accordingly.

Accept, Excellency, the renewed assurances of my highest consideration.

A circular seal of the Department of the United States is positioned to the left of a handwritten signature. The seal features an eagle with spread wings in the center, surrounded by the text "DEPARTMENT OF THE UNITED STATES" and "1800". The signature is written in a cursive style, extending to the right of the seal.

DEPARTMENT OF STATE
OFFICE OF LANGUAGE SERVICES
(Translation Division)

LS No. 0992972
JS/
Russian

His Excellency
J. Collins
Ambassador Extraordinary and Plenipotentiary
of the United States of America
in the Russian Federation
Moscow

No. 3729/dsa

Moscow, September 22, 1999

Your Excellency:

I have the honor to confirm receipt of your note no. LES/063 of June 17, 1999, concerning the Treaty between the United States of America and the Russian Federation on Mutual Legal Assistance in Criminal Matters signed on June 17, 1999, which [note] reads as follows:

[The Russian translation of the aforesaid note corresponds in all substantive respects to the text of the English original, with the following exception:

English: ...is sufficient to meet the concerns of the United States in this area...
Russian [translated]: ...is sufficient grounds for concern in this area...]

I have the honor to report that the Russian side shares the understanding in regard to Article 4(1)(2) set forth in the above-mentioned note.

Please accept, Your Excellency, the assurances of my highest consideration.

[s] A. Avdeyev

/Stamp of the RF Ministry of Foreign Affairs/

DEPARTMENT OF STATE
OFFICE OF LANGUAGE SERVICES
(Translation Division)

LS No. 1000193
JS/
Russian

MINISTRY OF FOREIGN AFFAIRS
OF THE RUSSIAN FEDERATION

No. 4289/dsa

The Ministry of Foreign Affairs of the Russian Federation presents its compliments to the Embassy of the United States of America and, referring to its note no. 3729 of September 22, 1999, concerning paragraph 1(2) of Article 4 of the Treaty between the Russian Federation and the United States of America on Cooperation in Criminal Law Matters, has the honor to request that the final sentence in the first paragraph on the second page of the aforesaid note read as follows: "I hereby confirm that, from the viewpoint of the United States, paragraph 1(2) of Article 4 is sufficient to meet the concern in this area, and that the United States will apply this Treaty accordingly."

The Ministry avails itself of this opportunity to renew to the Embassy the assurances of its high consideration.

Moscow
October 20, 1999

/Stamp of the MFA of the Russian Federation/

To the Embassy of the United States of America
Moscow

ДОГОВОР

МЕЖДУ СОЕДИНЕННЫМИ ШТАТАМИ АМЕРИКИ И РОССИЙСКОЙ ФЕДЕРАЦИЕЙ О ВЗАИМНОЙ ПРАВОВОЙ ПОМОЩИ ПО УГОЛОВНЫМ ДЕЛАМ

Соединенные Штаты Америки и Российская Федерация, в дальнейшем именуемые Сторонами,
стремясь к расширению и углублению американо-российского сотрудничества по предупреждению преступности и борьбе с ней и подтверждая свою решимость совершенствовать оказание правовой помощи по уголовным делам,
согласились о нижеследующем:

СТАТЬЯ 1

ОБЩИЕ ПОЛОЖЕНИЯ

1. Стороны оказывают друг другу в соответствии с настоящим Договором всестороннюю взаимную правовую помощь по уголовным делам.

2. Для целей настоящего Договора под правовой помощью по уголовным делам понимается любая помощь, оказываемая Сторонами в связи с предупреждением, пресечением, расследованием преступлений и уголовным преследованием, а также с производством, имеющим отношение к таким уголовным делам.

3. Правовая помощь оказывается в соответствии с положениями настоящего Договора, если деяние, в связи с которым поступил запрос, является преступлением по законодательству обеих Сторон. Запрашиваемая Сторона может по своему усмотрению оказать правовую помощь также в случае, если деяние, в связи с которым поступил запрос, не является преступлением по ее законодательству.

4. Настоящий Договор направлен исключительно на достижение целей сотрудничества и взаимной помощи Сторон. Положения настоящего Договора не ведут к возникновению у каких-либо иных лиц права получать доказательства, добиваться исключения тех или иных доказательств либо препятствовать исполнению запроса.

5. Для целей настоящего Договора термин "лица" означает как физических, так и юридических лиц, в пункте 4 настоящей статьи, а также

в подпункте 4 статьи 2, подпунктах 1-5 пункта 3 статьи 5, пункте 1 статьи 10, статье 14 и пункте 2 статьи 15.

СТАТЬЯ 2

ОБЪЕМ ПРАВОВОЙ ПОМОЩИ

Правовая помощь в соответствии с положениями настоящего Договора включает:

- 1) получение показаний и заявлений;
- 2) предоставление документов, материалов и других предметов;
- 3) вручение документов;
- 4) установление местонахождения и идентификацию лиц и предметов;
- 5) исполнение запросов о проведении обысков и выемок;
- 6) передачу лиц, содержащихся под стражей, для дачи показаний или для других целей, предусмотренных настоящим Договором;
- 7) установление местонахождения и арест имущества с целью его конфискации, возмещения ущерба и взимания штрафов;
- 8) любую иную правовую помощь, не запрещенную законами запрашиваемой Стороны.

СТАТЬЯ 3

ЦЕНТРАЛЬНЫЕ ОРГАНЫ И ПОРЯДОК СНОШЕНИЙ

1. Каждая Сторона осуществляет реализацию положений настоящего Договора, включая направление и получение запросов, через свой Центральный орган.

2. Центральным органом для Соединенных Штатов Америки является Министр юстиции или назначенные им лица. Центральным органом для Российской Федерации является Генеральная прокуратура Российской Федерации или назначенные Генеральным прокурором Российской Федерации лица.

3. Центральные органы в целях выполнения настоящего Договора сносятся друг с другом непосредственно и могут согласовывать между собой практические меры, необходимые для облегчения выполнения настоящего Договора.

СТАТЬЯ 4**ОТКАЗ В ОКАЗАНИИ ПРАВОВОЙ ПОМОЩИ**

1. Центральный орган запрашиваемой Стороны может отказать в оказании правовой помощи в случае, если:

1) запрос касается преступления, предусмотренного военным законодательством, которое не является преступлением по общеуголовному праву;

2) исполнение запроса нанесло бы ущерб безопасности или иным существенным интересам запрашиваемой Стороны; или

3) запрос не соответствует требованиям настоящего Договора.

2. Запрашиваемая Сторона не должна отказывать в исполнении запроса по основаниям необходимости сохранения банковской тайны.

3. Центральный орган запрашиваемой Стороны до вынесения решения об отказе в оказании правовой помощи на основании пункта 1 настоящей статьи проводит консультации с Центральным органом запрашивающей Стороны для рассмотрения вопроса о том, может ли правовая помощь быть оказана при соблюдении тех условий, которые он считает необходимыми. Если запрашивающая Сторона принимает правовую помощь на таких условиях, она должна соблюдать эти условия.

4. Если Центральный орган запрашиваемой Стороны отказывает в оказании правовой помощи, он информирует Центральный орган запрашивающей Стороны о причинах отказа.

СТАТЬЯ 5**ФОРМА И СОДЕРЖАНИЕ ЗАПРОСА О ПРАВОВОЙ ПОМОЩИ**

1. Запрос о правовой помощи направляется в письменной форме, однако при наличии чрезвычайных обстоятельств Центральный орган запрашиваемой Стороны может принять запрос в иной форме. Если запрос направляется не в письменном виде, он должен быть подтвержден письменно в течение десяти дней со дня получения запроса запрашиваемой Стороной, если только Центральный орган запрашиваемой Стороны не примет другого решения.

2. Запрос включает:

1) название органа, от имени которого направляется запрос;

2) изложение фактов и обстоятельств дела;

3) текст закона, на основании которого деяние признается преступлением;

- 4) описание запрашиваемой помощи;
- 5) указание цели, для которой запрашивается помощь.

3. В той мере, в какой это необходимо и возможно, запрос также содержит:

- 1) данные о личности и предполагаемом местонахождении разыскиваемого лица;
 - 2) данные о личности и местонахождении лица, которому необходимо вручить документ, о связи этого лица с проводимым разбирательством и порядке вручения документа;
 - 3) информацию о личности и местонахождении лица, от которого необходимо получить доказательства;
 - 4) перечень вопросов, которые требуется задать лицу, обозначенному в запросе;
 - 5) точное описание места или лица, подлежащих обыску, и предмета, подлежащего выемке;
 - 6) описание порядка исполнения запроса;
 - 7) информацию о выплатах и возмещении расходов, на которые будет иметь право лицо, вызываемое на территорию запрашивающей Стороны;
 - 8) любую иную информацию, которая может быть доведена до сведения Центрального органа запрашиваемой Стороны для облегчения исполнения запроса.
4. Запрос оформляется и подписывается в соответствии с правилами, установленными в запрашивающей Стороне.

СТАТЬЯ 6

ЯЗЫК

Запрос и прилагаемые к нему документы, направляемые в соответствии с настоящим Договором, сопровождаются переводом на языке запрашиваемой Стороны, если между Центральными органами Сторон не будет достигнута договоренность об ином.

СТАТЬЯ 7

ИСПОЛНЕНИЕ ЗАПРОСА

1. Центральный орган запрашиваемой Стороны незамедлительно исполняет запрос или направляет его органу, компетентному исполнить этот запрос. Компетентные органы запрашиваемой Стороны делают все от них зависящее для своевременного исполнения запроса.

2. Центральный орган запрашиваемой Стороны представляет интересы запрашивающей Стороны при исполнении запроса.

3. Запрос исполняется в соответствии с законодательством запрашиваемой Стороны, если иное не предусмотрено настоящим Договором. Компетентные органы запрашиваемой Стороны имеют право вручать повестки, выдавать ордера на обыск и другие ордера, необходимые для исполнения запроса. Запрашиваемая Сторона исполняет запрос в соответствии с указанными в нем требованиями, если это не запрещено ее законодательством.

4. Если Центральный орган запрашиваемой Стороны считает, что исполнение запроса помешает осуществляемому в его государстве расследованию преступления, уголовному преследованию или производству, относящемуся к какому-либо уголовному делу, он может отложить исполнение запроса или связать его исполнение с соблюдением условий, признанных необходимыми после консультаций с Центральным органом запрашивающей Стороны. Если запрашивающая Сторона принимает помощь на таких условиях, она должна соблюдать эти условия.

5. Запрашиваемая Сторона делает все от нее зависящее для обеспечения конфиденциальности запроса и его содержания при наличии просьбы об этом Центрального органа запрашивающей Стороны. Если сохранение конфиденциальности при исполнении запроса невозможно, Центральный орган запрашиваемой Стороны информирует об этом Центральный орган запрашивающей Стороны, который решает, следует ли исполнять запрос при таких обстоятельствах.

6. Центральный орган запрашиваемой Стороны по просьбе Центрального органа запрашивающей Стороны информирует его о ходе исполнения запроса.

7. По запросу Центрального органа запрашивающей Стороны Центральный орган запрашиваемой Стороны заблаговременно предоставляет информацию о дате и месте исполнения запроса. Запрашиваемая Сторона допускает при исполнении запроса присутствие указанных в нем лиц.

8. Центральный орган запрашиваемой Стороны незамедлительно информирует Центральный орган запрашивающей Стороны о результатах исполнения запроса. Если запрос не был исполнен либо его исполнение было задержано или отсрочено, Центральный орган запрашиваемой Стороны информирует Центральный орган запрашивающей Стороны о причинах неисполнения запроса либо его задержки или отсрочки.

СТАТЬЯ 8**РАСХОДЫ**

1. Запрашиваемая Сторона несет все расходы, связанные с исполнением запроса, за исключением того, что запрашивающая Сторона несет расходы по оплате услуг экспертов, письменного и устного перевода и протоколирования, а также расходов и выплат, связанных с поездками лиц в соответствии со статьями 11 и 12 настоящего Договора.

2. Если становится очевидным, что исполнение запроса потребует чрезвычайных расходов, Центральные органы Сторон проводят консультации в целях определения условий, в соответствии с которыми может быть оказана соответствующая помощь.

СТАТЬЯ 9**ОГРАНИЧЕНИЯ НА ИСПОЛЬЗОВАНИЕ РЕЗУЛЬТАТОВ
ИСПОЛНЕНИЯ ЗАПРОСА**

1. Центральный орган запрашиваемой Стороны может потребовать от запрашивающей Стороны, чтобы она не использовала без предварительного согласия Центрального органа запрашиваемой Стороны результаты исполнения запроса, полученные в соответствии с настоящим Договором, в иных целях, чем те, которые были указаны в запросе. В таких случаях запрашивающая Сторона соблюдает указанные ограничения на использование результатов исполнения запроса.

2. Ничто в настоящей статье не исключает использования или разглашения результатов исполнения запроса, если конституцией запрашивающей Стороны предусмотрено обязательство сделать это в ходе уголовного преследования. Центральный орган запрашивающей Стороны заранее уведомляет запрашиваемую Сторону о таком, возможном или предстоящем использовании или разглашении.

3. Результаты исполнения запроса, использованные в указанных в нем целях и при этом обнародованные в запрашивающей Стороне в соответствии с настоящим Договором, могут в дальнейшем быть использованы в любых целях.

7

СТАТЬЯ 10

ПОЛУЧЕНИЕ ПОКАЗАНИЙ НА ТЕРРИТОРИИ ЗАПРАШИВАЕМОЙ СТОРОНЫ

1. Лицо, от которого требуется дача показаний, представление документов, записей либо предметов, в запрашиваемой Стороне вызывается, при необходимости, повесткой или распоряжением для явки и дачи показаний, а также для представления таких документов, записей либо предметов в соответствии с требованиями законодательства запрашиваемой Стороны.

2. В соответствии с процедурой, применяемой в запрашиваемой Стороне, лицам, присутствующим при исполнении запроса, разрешается непосредственно задавать вопросы опрашиваемому лицу или формулировать вопросы, которые должны быть ему заданы, а также осуществлять дословную запись в ходе производства процессуального действия, используя, при необходимости, технические средства.

3. Если лицо, упомянутое в пункте 1 настоящей статьи, заявляет о своем иммунитете, неспособности или привилегии в соответствии с законодательством запрашивающей Стороны, показания, тем не менее, будут получены, а о его заявлении будет сообщено запрашивающей Стороне для принятия решения ее компетентным органом.

СТАТЬЯ 11

ПОЛУЧЕНИЕ ПОКАЗАНИЙ В ЗАПРАШИВАЮЩЕЙ СТОРОНЕ

1. В случае запроса запрашивающей Стороны о явке какого-либо лица на ее территорию запрашиваемая Сторона приглашает это лицо явиться в соответствующий компетентный орган в запрашивающей Стороне. Запрашивающая Сторона указывает, в каком объеме такому лицу будут возмещены расходы и выданы пособия. Центральный орган запрашиваемой Стороны незамедлительно информирует Центральный орган запрашивающей Стороны об ответе данного лица. Лицо, давшее согласие на явку, может обратиться к запрашивающей Стороне с просьбой о выдаче аванса на покрытие этих расходов. Этот аванс может быть предоставлен через посольство или консульство запрашивающей Стороны.

2. Лицо, явившееся на территорию запрашивающей Стороны в соответствии с настоящей статьей, не может быть привлечено к участию в процессуальных действиях либо подвергнуться задержанию или каким бы

то ни было ограничениям личной свободы по причине каких-либо деяний или фактов осуждения, имевших место до отбытия этого лица с территории запрашиваемой Стороны. Если такая гарантия не может быть предоставлена по каким-либо причинам, Центральный орган запрашивающей Стороны указывает это в запросе с целью проинформировать приглашенное лицо и позволить ему принять решение о явке с учетом данных обстоятельств.

3. Гарантия неприкосновенности, предоставленная настоящей статьей, прекращает действовать по прошествии семи дней после того, как Центральный орган запрашивающей Стороны уведомил Центральный орган запрашиваемой Стороны об отсутствии потребности в дальнейшем присутствии этого лица либо в том случае, если это лицо покинуло территорию запрашивающей Стороны, а затем добровольно туда возвратилось. Центральный орган запрашиваемой Стороны может по своему усмотрению продлить этот срок до пятнадцати дней, если он придет к выводу, что на это есть достаточные основания.

СТАТЬЯ 12

ПЕРЕДАЧА ЛИЦ, СОДЕРЖАЩИХСЯ ПОД СТРАЖЕЙ

1. Лицо, содержащееся под стражей в одной из Сторон, чье присутствие в другой Стороне запрашивается для целей оказания правовой помощи согласно настоящему Договору, передается в этих целях из направляющей Стороны в принимающую Сторону при наличии согласия этого лица на такую передачу, а также при наличии согласия Центральных органов обеих Сторон.

2. Для целей настоящей статьи:

1) принимающая Сторона вправе и обязана содержать переданное лицо под стражей, если только направляющей Стороной не предусмотрено иное;

2) принимающая Сторона возвращает переданное лицо в распоряжение направляющей Стороны, как только это позволят обстоятельства либо в соответствии с иной договоренностью Центральных органов Сторон;

3) принимающая Сторона не требует, чтобы направляющая Сторона инициировала процедуры выдачи для возврата переданного лица;

4) период пребывания переданного лица под стражей в принимающей Стороне засчитывается в срок отбытия наказания, назначенного переданному лицу в направляющей Стороне;

5) в случае истечения срока отбытия наказания или когда направляющая Сторона сообщит принимающей Стороне, что нет более необходимости содержать данное лицо под стражей, с этим лицом должны обращаться как с лицом, приглашенным в соответствии со статьей 11 настоящего Договора, либо это лицо должно быть возвращено направляющей Стороне.

СТАТЬЯ 13

ПРЕДОСТАВЛЕНИЕ ОФИЦИАЛЬНЫХ МАТЕРИАЛОВ

1. Запрашиваемая Сторона предоставляет запрашивающей Стороне по ее запросу копии общедоступных официальных материалов органов исполнительной, законодательной и судебной власти, включая информацию и документы любого характера и в любой форме, которыми располагают органы исполнительной, законодательной и судебной власти запрашиваемой Стороны.

2. Запрашиваемая Сторона может предоставить копии любых записей и материалов, включая информацию и документы любого характера и в любой форме, которыми располагают органы исполнительной, законодательной и судебной власти этой Стороны, не являющиеся общедоступными; однако такая информация и документы могут предоставляться лишь в том объеме и на тех условиях, какие действовали бы в отношении доступа к ним компетентных органов запрашиваемой Стороны. Запрашиваемая Сторона может по своему усмотрению полностью или частично отклонить запрос, сделанный на основании настоящего пункта.

СТАТЬЯ 14

УСТАНОВЛЕНИЕ МЕСТОНАХОЖДЕНИЯ И ИДЕНТИФИКАЦИЯ ЛИЦ И ПРЕДМЕТОВ

Если запрашивающая Сторона просит установить местонахождение лиц или идентифицировать их либо предоставить сведения о предметах, находящихся в запрашиваемой Стороне, то запрашиваемая Сторона принимает все необходимые меры для исполнения запроса.

СТАТЬЯ 15**ВРУЧЕНИЕ ДОКУМЕНТОВ**

1. Запрашиваемая Сторона делает все от нее зависящее для вручения документов в соответствии с запросом.
2. Запрашивающая Сторона передает любой запрос о вручении документа, предусматривающего явку лица в компетентный орган запрашивающей Стороны, в разумные сроки до назначенной даты явки.
3. Запрашиваемая Сторона направляет запрашивающей Стороне подтверждение о вручении документов в соответствии с порядком, указанным в запросе.

СТАТЬЯ 16**ОБЫСК И ВЫЕМКА**

1. Запрашиваемая Сторона исполняет запрос о производстве обыска или выемки, а также о передаче какого-либо предмета запрашивающей Стороне, если в запрос включена информация, обосновывающая эти действия в соответствии с законодательством запрашиваемой Стороны.
2. Каждое должностное лицо запрашиваемой Стороны, на хранении которого находился изъятый предмет, при наличии просьбы удостоверяет подлинность предмета, его неприкосновенность и непрерывность хранения.
3. Запрашиваемая Сторона может потребовать у запрашивающей Стороны соблюдения условий, которые представляются необходимыми для защиты интересов третьих лиц в отношении передаваемого предмета.

СТАТЬЯ 17**ПЕРЕДАЧА ДОКУМЕНТОВ, ЗАПИСЕЙ И ДРУГИХ ПРЕДМЕТОВ**

1. В случае, когда запрос о правовой помощи предполагает передачу документов или записей, запрашиваемая Сторона передает надлежащим образом заверенные копии последних, если запрашивающая Сторона прямо не попросит о передаче оригиналов; в таком случае запрашиваемая Сторона принимает все меры для исполнения запроса.
2. Поскольку это не противоречит законодательству запрашиваемой Стороны, она передает документы, записи и другие предметы в таком

виде или заверенные таким образом, которых может потребовать запрашивающая Сторона с целью признания таковых допустимыми доказательствами в соответствии с законодательством запрашивающей Стороны. В этих целях Центральные органы Сторон обмениваются в соответствии с пунктом 3 статьи 3 настоящего Договора информацией, касающейся того, что является допустимыми доказательствами согласно правовой системе каждой из Сторон. Документы, записи и другие предметы, переданные согласно запросу, направленному в соответствии с настоящим пунктом, не нуждаются в дальнейшем удостоверении подлинности.

3. Центральный орган запрашиваемой Стороны может потребовать, чтобы Центральный орган запрашивающей Стороны, как только это станет возможным, возвратил любые документы, записи и другие предметы, предоставленные ему в ходе исполнения запроса, направленного в соответствии с настоящим Договором.

СТАТЬЯ 18

ИМУЩЕСТВО, ПРИОБРЕТЕННОЕ ПРЕСТУПНЫМ ПУТЕМ, И ОРУДИЯ СОВЕРШЕНИЯ ПРЕСТУПЛЕНИЙ

1. Стороны в соответствии со своим законодательством оказывают друг другу помощь в розыске, аресте и изъятии имущества, приобретенного преступным путем, включая доходы от преступной деятельности или являющиеся ее результатом, а также орудий совершения преступлений с целью конфискации, возмещения вреда потерпевшим от преступлений, а также взыскания штрафов, наложенных в соответствии с постановлениями судов по уголовным делам.

2. Если Центральному органу одной из Сторон стало известно, что имущество, приобретенное преступным путем, и орудия совершения преступлений, которые могут быть предметом конфискации, находятся на территории другой Стороны, он может информировать Центральный орган другой Стороны с тем, чтобы эта Сторона могла принять надлежащие меры в соответствии с пунктом 3 настоящей статьи. Центральный орган, получивший эту информацию, уведомляет Центральный орган, предоставивший информацию, о предпринятых действиях.

3. Сторона, которая осуществила арест, изъятие или конфискацию имущества, приобретенного преступным путем, и орудий совершения преступлений, распоряжается ими в соответствии со своим законодательством. Эта Сторона передает такое имущество полностью

или частично, а также доходы, поступившие от его продажи, другой Стороне, в том числе для целей конфискации и возмещения ущерба (включая возврат законным владельцам), поскольку это разрешено ее законодательством, и до пределов, которые она сочтет необходимыми, а также в тех пределах времени и в соответствии с теми условиями, какие она сочтет приемлемыми.

СТАТЬЯ 19

КОНСУЛЬТАЦИИ

Центральные органы Сторон во взаимосогласованные сроки проводят консультации в целях содействия наиболее эффективному применению настоящего Договора.

СТАТЬЯ 20

СФЕРА ПРИМЕНЕНИЯ

Настоящий Договор применяется ко всем запросам, поступившим после его вступления в силу, даже если соответствующие действие или бездействие имели место до этой даты.

СТАТЬЯ 21

ИНЫЕ ПРАВОВЫЕ ОСНОВЫ СОТРУДНИЧЕСТВА

Положения настоящего Договора не препятствуют любой из Сторон в осуществлении сотрудничества и в оказании помощи согласно положениям иных применимых международных договоров и соглашений, а также в соответствии со своим законодательством и практикой.

СТАТЬЯ 22

ВСТУПЛЕНИЕ В СИЛУ И ПРЕКРАЩЕНИЕ ДЕЙСТВИЯ

1. Настоящий Договор подлежит ратификации и вступает в силу с даты обмена ратификационными грамотами, который состоится в возможно короткие сроки.

2. При вступлении в силу настоящего Договора утрачивает силу Соглашение между Правительством Соединенных Штатов Америки и Правительством Российской Федерации о сотрудничестве по уголовно-правовым вопросам, подписанное 30 июня 1995 года.

3. Любая из Сторон может прекратить действие настоящего Договора путем направления другой Стороне по дипломатическим каналам письменного уведомления о своем намерении прекратить его действие. Прекращение действия настоящего Договора происходит по истечении шести месяцев с даты получения такого уведомления.

Совершено в Москве «17» июня 1999 года в двух экземплярах, каждый на английском и русском языках, причем оба текста имеют одинаковую силу.

**ЗА СОЕДИНЕННЫЕ
ШТАТЫ АМЕРИКИ**

**ЗА РОССИЙСКУЮ
ФЕДЕРАЦИЮ**

N 3729/9ca

Москва, « 22 » сентября 1999 года

Ваше Превосходительство,

Имею честь подтвердить получение Вашей ноты
№ LES/063 от 17 июня 1999 года, касающейся Договора
между Российской Федерацией и Соединенными
Штатами Америки о взаимной правовой помощи по
уголовным делам, подписанного 17 июня 1999 года,
следующего содержания.

«Ваше Превосходительство,

Имею честь сослаться на подписанный сегодня
Договор между Соединенными Штатами Америки и
Российской Федерацией о взаимной правовой помощи
по уголовным делам (далее «Договор»).

ЕГО ПРЕВОСХОДИТЕЛЬСТВУ
ГОСПОДИНУ ДЖ.КОЛЛИНЗУ
ЧРЕЗВЫЧАЙНОМУ И ПОЛНОМОЧНОМУ ПОСЛУ
СОЕДИНЕННЫХ ШТАТОВ АМЕРИКИ
В РОССИЙСКОЙ ФЕДЕРАЦИИ

г.Москва

В связи с Договором мое Правительство отмечает, что во время его обсуждения делегация Соединенных Штатов согласилась исключить из пункта 1 статьи 4 свое предложение по включению специальной ссылки на «политические преступления» в качестве основания для отказа в оказании правовой помощи по Договору. Действуя таким образом, Соединенные Штаты принимали во внимание точку зрения российской делегации относительно того, что термин «политические преступления» не используется в российском законодательстве, и что пункт 1(2) статьи 4 Договора содержит достаточно оснований для отказа в исполнении запросов об оказании правовой помощи в случаях, рассматриваемых Соединенными Штатами в качестве «политических преступлений». Пункт 1 (2) статьи 4 разрешает каждой из сторон отказать в оказании правовой помощи в случае, если исполнение запроса нанесло бы ущерб «безопасности или иным существенным интересам» запрашиваемой Стороны. Тем самым я подтверждаю, что с точки зрения Соединенных Штатов, пункт 1 (2) статьи 4 является достаточным основанием для озабоченности в этой области, и что Соединенные Штаты будут соответствующим образом применять данный Договор.

Еще раз примите, Ваше Превосходительство, уверения в моем весьма высоком уважении.»

Имею честь сообщить, что Российская Сторона разделяет понимание относительно пункта 1(2) статьи 4 Договора, изложенное в вышеуказанной ноте.

Примите, Ваше Превосходительство, уверения в моем весьма высоком уважении.

Ваш А. Авдеев



А. Авдеев

N 4289 / ДСА

Министерство Иностранных Дел Российской Федерации свидетельствует свое уважение Посольству Соединённых Штатов Америки и, ссылаясь на свою ноту № 3729 от 22 сентября с.г. относительно пункта 1 (2) статьи 4 Договора между Российской Федерацией и Соединёнными Штатами Америки о взаимной правовой помощи по уголовным делам, имеет честь просить читать последнее предложение первого абзаца второй страницы упомянутой ноты следующим образом: «Тем самым я подтверждаю, что, с точки зрения Соединённых Штатов, пункт 1 (2) статьи 4 является достаточным для снятия озабоченности в этой области и что Соединённые Штаты будут соответствующим образом применять данный Договор».

ПОСОЛЬСТВУ
СОЕДИНЁННЫХ ШТАТОВ АМЕРИКИ

г. Москва

Министерство пользуется случаем, чтобы
возобновить Посольству уверения в своем высоком
уважении.



Москва, 20 октября 1999 года

EXHIBIT 21

CIN

From: SPO
 To: CID
 Cc: ISD; SEA; DAY; CLB; MOS; CIN; SPO
 Subject: CT 775.300 (410-775-9446-S) Schlotzsky's Deli (Cont'd/Request for IOD)
 Attachments:

Sent: Wed 9/15/2010 2:39 PM

Cc: SAK. Dye
TM

U. S. SECRET SERVICE INVESTIGATIVE REPORT

FROM: SPOKANE RESIDENT OFFICE FILE: 410-775-9446-S
 TO : CRIMINAL INVESTIGATIVE DIVISION X-REF: 202-768-22869-S
 INFO: ISD SEIZURE: N/A
 SEATTLE FIELD OFFICE
 DAYTON RESIDENT OFFICE
 COLUMBUS RESIDENT OFFICE
 MOSCOW RESIDENT OFFICE
 CINCINNATI FIELD OFFICE

SUBJECT: REPORT OF CONTINUING INVESTIGATION/REQUEST FOR IOD

ACTUAL LOSS: \$146,199.64 POTENTIAL LOSS: \$TBD

CASE TITLE: SCHLOTZSKY'S DELI
 CASE TYPE: 775.300 (NETWORK INTRUSION - Private)
 SECONDARY TYPES: 848.910; 848.920; 848.930; 770.100
 CONTROLLING OFFICE: SPOKANE RESIDENT OFFICE
 REPORT MADE BY: CASE SA JAMES BRANHAM (509) 353-2532
 DATE CASE OPENED: 5/13/10
 PREVIOUS REPORT: OPENING REPORT - 6/8/10
 REPORTING PERIOD: 6/9/10 - 9/13/10
 STATUS: CONTINUED

200 SEP 15 P 2:51
 RECEIVED
 INVESTIGATIVE DIVISION

SYNOPSIS:

Schlotzsky's Deli in Coeur d'Alene, ID, has been identified as the point of compromise for credit card fraud utilizing accounts belonging to people living in the Pacific Northwest.

The fraudulent activity occurred both domestically and foreign with an updated known fraud loss of \$146,199.

Investigation continues into identifying the potential source of the breach and a possible vendor selling the credit card dumps. The possible vendor has been identified as a result of an ongoing case in the Cincinnati Field Office (FO).

The United States Attorney's Office (USAO), District of Idaho, has been briefed on the case and has agreed to open a case for the issuance of court orders and Grand Jury subpoenas to further the investigation and for possible prosecution in the District of Idaho.

Case continued pending further investigation.

DETAILS OF INVESTIGATION:

Reference is made to the previous report in this case, dated 9/10/10, written by RAIC David Deetz, Moscow RO, responding to an Investigation Other District (IOD) request.

lan
[https://owa.ssnet.usss.dhs.gov/exchange/cin/Inbox/CT%20775.300%20\(410-775-9446-S\)...](https://owa.ssnet.usss.dhs.gov/exchange/cin/Inbox/CT%20775.300%20(410-775-9446-S)...) 9/15/2010

USSS_CINCINATTI_0000011

Reference is made to the Report of IOD, dated 7/30/10, written by SA Mike McClelland, Columbus RO.

Reference is made to the Memorandum Report, dated 7/20/10, written by SA Kevin Dye, Cincinnati FO, regarding the cross referencing of this case with an investigation being conducted by the Cincinnati FO.

Reference is made to the multiple communications between the Spokane RO the Criminal Investigative Division (CID), Moscow RO and the Seattle FO concerning this investigation.

This case originated in the field with a duty call, on 5/5/10, from Fiserv who advised Schlotzsky's Deli in Coeur d'Alene, ID had been identified as the point of compromise in ongoing credit card fraud.

On 5/21/10, Task Force Officer (TFO) Detective Dave Dunn, ECTF Seattle FO, provided me with a copy of his forensic analysis of the Point of Sale Systems (POS) for Schlotzsky's. In summary, TFO Dunn found the process Kameo.exe running on the POS system and it was attempting to contact IP address 188.120.225.66. Through his forensic analysis TFO Dunn concluded the Kameo.exe was placed on the POS system on 4/1/10 at approximately 7:33am. Also through analysis TFO Dunn was able to determine the true name of the Kameo.exe process was "keywordsniffer.exe."

A hard copy of this report has been retained in the office case file.

On 7/14/10, I was contacted by SA Kevin Dye, Cincinnati FO, concerning the state arrests of individuals who were purchasing items using stolen credit card numbers. SA Dye advised he had contacted the issuing banks on four (4) credit card numbers recovered during his investigation and they were compromised at Schlotzsky's Deli. SA Dye advised they recovered a laptop computer and a credit card encoder during the arrest.

On 7/20/10, RAIC David Deetz, Moscow RO, reported the Russian Federal Security Service (FSB) was continuing to provide assistance in this case but requested additional information concerning the IP address resolving back to Russia. On 7/28/10, TFO Dunn received a preliminary copy of the forensic report completed by the Cincinnati FO relating to the aforementioned case. TFO Dunn provided the following information related to this report:
On 07/28/2010, I received the preliminary forensic report from the USSS CIN office. In reviewing that report, there were two files that appeared to be unique in the way that they were named. Those files were, "order--3186.txt" and "order--3187.txt" These appeared to be an automated naming convention that may have come from an online credit card dumps vendor.

I contacted SA Ron Smalley at CIS regarding the naming of these files and asked if there were any known online vendors who were using this format. SA Smalley researched this for me and advised that there was a vendor, who goes by the online nickname of "Track2" and he uses this naming convention.

On 8/4/10, I obtained a copy of the forensic analysis report completed by SecurityMetrics Inc from Schlotzsky's owner Steve Cord. Mr. Cord was required by VISA to have the independent forensic audit completed per his merchant agreement with VISA. A copy of the forensic report will be retained in the case file.

On 8/16/10, RAIC David Deetz, Moscow RO, requested additional information in order to complete the IOD request. The requested information was provided by TFO Dunn to RAIC Deetz in order to fulfill the request to the FSB.

On 8/26/10, TFO Dunn received a copy of the imaged suspect drive in the Cincinnati

FO case. After reviewing the imaged hard drive TFO Dunn provided the following analysis:

On 08/26/2010 I began to conduct forensics on the drive from CIN. I spoke with SA Smalley at CIS who also provided me with the ICQ number for Track2, 554716101.

In reviewing the drive image, I located the two files, "order---3186.txt" and "order---3187.txt", and saw that they had dates stamps of 06/23/10 at 0850 AM.

I reviewed the internet history for this time frame to ascertain the origin for the dumps. I found that the dumps were purchased from a website whose URL or address is www.bulba.cc. Just prior to going to the site, the CIN suspect was on the website, libertyreserve.com, most likely to fund his dump purchase.

The final dump file also likely came from bulba.cc. I found that on June 19 and 20, the suspect was talking about wanting to get his lr(Liberty Reserve) account straight so that he could deal with "bulba". He then deals with a subject who will exchange western union wired money for liberty reserve currency and on 06/19/2010 sends him \$240 for conversion.

In researching the website, bulba.cc, I found that, on 08/26/10, the site was hosted on a Ukrainian webserver at IP address, 213.186.112.132. I checked to see what other sites were hosted at that IP address, and found that the other site hosted at that IP was, www.track2.name. I visited the sites and found them to be identical, except for the colors used.

On 9/9/10, I contacted the financial institutions that have previously been identified as the issuing bank on credit card numbers compromised in this case and requested updated fraud losses. The following information was provided by affected institutions:

On 9/14/10, I served Federal Grand Jury subpoenas on AOL/ICQ and Yahoo! for records related to this investigation.

JUDICIAL ACTION:

On 9/8/10, TFO Detective Dave Dunn, Seattle ECTF, RAIC Kevin Miller and I met with AUSA's Mike Mitchell and Nancy Cook, District of Idaho, and presented the facts of this case. AUSA Cook agreed to open a case and issue subpoenas for investigative leads. AUSA Cook agreed to prosecution at the conclusion of the investigation if a suspect can be identified and apprehended.

On 9/10/10, I e-mailed AUSA Cook requesting subpoenas for AOL/ICQ #554716101 and Yahoo! E-mail addresses rubensamvelich@yahoo.com, bulbacc@yahoo.com, and bandysli64@yahoo.com.

On 9/14/10, I e-mailed AUSA Cook requesting a subpoena for Western Union documents related to the purchasing of credit card dumps by suspects in this case.

On 9/14/10, Legal Assistant P.J. Foster, USAO, delivered the requested subpoenas for AOL and Yahoo!.

SUSPECTS / DEFENDANTS:

LNU, FNU - SUSPECT
AKA: Track 2

RACE: Unknown
SEX: Unknown
DOB: Unknown
SSN: Unknown
FBI: Unknown
SID: Unknown
HT: Unknown
WT: Unknown
EYES: Unknown
HAIR: Unknown
1599: Unknown
1599A: Unknown
PHOTO: Unknown
PRINTS: Unknown
POB: Unknown
DL/STATE: Unknown
ADDRESS: Unknown
EMAIL: Unknown
DATABASE CHECKS: N/A

DATABASE SEARCHES CONDUCTED:

No database searches were conducted during this reporting period.

EXAMS:

ECSAP: 5/17/10 TFO Dunn, ECTF Seattle FO

EVIDENCE / CONTRABAND / PERSONAL PROPERTY:

No evidence has been inventoried at this time.

DISPOSITION:

Request for IOD:

The Moscow RO is requested to continue liaison efforts with the Russian Federal Security Service and attempt to determine subscriber information for IP address 188.120.225.66. The Moscow RO is further requested to obtain any information which maybe useful in determining the origin of the compromise.

Case continued pending reporting of IOD's and further investigation.

SPOKANE

BRANHAM / MILLER